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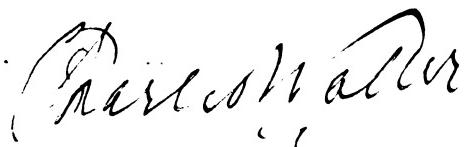
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WASHINGTON, D. C., - - - January 7, 1892

PEOPLE who are lucky enough to trace back to a great grandfather, who was unlucky enough to have a ship captured by a French privateer, along about the year 1799; will be interested in the opinion of the court in *Gardner, admr., v. Clarke, admr.* The question involved affects heirs as distributees of French Spoliation money in various parts of the country. The decision is therefore of more than local or passing interest. This precise question, we understand, is now before the courts of Virginia and New York, and is expected soon to be determined by the Supreme Court of Pennsylvania.

Mr. Justice Cox after a careful examination of the act, interprets the intention of Congress as to who shall share as distributees. The legislation, it will be seen, is peculiar. The court has concluded that Congress gives the money to the present next of kin, without recognizing the existence of a valid claim against the United States in the original claimant.

To find out what Congress means is a good deal of an art, in which even congressmen themselves are often unable to contribute any aid. The Supreme Court of the United States has the advantage of sitting under the dome of the Capitol, in easy proximity to both branches of Congress, so that the judicial ear can almost be said to hear the echoes of debate. Besides, a senator occasionally is good enough to appear before the court, and explain what in his opinion an enactment was supposed to mean that he had a hand in framing.

Next in order comes the Supreme Court of the District, which has profited by a long experience in fathoming the hidden meaning of the congressional mind. What this court has to say by way of interpreting

a statute of the United States is properly regarded as of weight throughout the country. It is fortunate, therefore, that this important question has here received the careful consideration of judges familiar with the subject matter of claims against the United States.

Our readers will not fail to be struck with the fact that this suit was brought in the equity court, October 19th, and a decision obtained in General Term on the 25th of November. The French Spoliation claimant, after waiting ninety years to see the first dollar paid out of the United States Treasury, to right what he considers a flagrant wrong, naturally felt that no time was to be lost in finding out judicially what Congress has meant by the proviso attached to the Deficiency Bill. The court appears to have exhibited a proper degree of sympathy in this direction.

It is important to be noted that the court do not say that these are not just claims against the United States. *That* question it was not necessary to decide. The decision goes no farther than to declare that, as regards distribution, Congress means that the money shall be paid over to present next of kin. Considering the extraordinary lapse of time that has ensued, and the complications sure to attend upon any other scheme of distribution, we think, it may be said, not only that the court has decided rightly, but that Congress has been eminently discreet in adopting this course of dealing with French Spoliation claimants.

◆◆◆

A NEGRO, being asked what he was in jail for, said it was for borrowing money. "But," said the questioner, "they don't put people in jail for borrowing money." "Yes," said the darkey, "but I had to knock de man down free or fo' times before he would lend it to me."—*Green Bag.*

Condemned murderer (to lawyer)—"You said you could get a sentence of imprisonment for life, and here I am to be hanged next month."

Lawyer—"Tha't all right; you will be imprisoned for life, wont you, and only a month, instead of long, weary years. Be reasonable, man!"—*Green Bag.*

Supreme Court of the District of Columbia.

WM. F. GARDNER, ADMR.,
V.

HENRY AUDLEY CLARKE, ADMR. OF
MARY CLARKE, ET AL.

1. Congress in making an appropriation to pay the findings of the Court of Claims in French Spoliation awards (26 U. S. Stat., 862,) intends that the money shall go to those who were next of kin to the deceased original claimant at the time the award was made.
2. G. an original claimant, by will divided the residue of his estate equally among her four children, naming them. A daughter died leaving no descendants: she bequeathed all her estate to her two brothers, naming them, to the exclusion of her half sister. Held, that G's administrator, having French Spoliation money for distribution, should pay over one-third to each son's descendants, and one-third to the descendants of the half sister.
3. The distinction pointed out between French Spoliation claims and those claims of a citizen upon the United States growing out of the action of a foreign nation where the United States has recognized a legal property in the claimant.

In Equity. No. 13,464. Decided November 30, 1891.

The CHIEF JUSTICE and Justices COX and JAMES sitting.

A BILL in equity brought by an administrator to obtain the direction of the court to enable him to distribute in the Orphans' Court certain money in his hands collected on a French Spoliation award.

THE FACTS are nearly all set forth in the opinion.

Plaintiff was appointed December 1, 1885, by the Orphans' Court of the District of Columbia administrator with the will annexed of Caleb Gardner, late of Newport, Rhode Island. He prosecuted a claim in the Court of Claims, which found an award and reported the same favorably to Congress. In the 2d Session, 51st Congress an appropriation was made to pay the findings of the Court of Claims on claims for indemnity for spoliation by the French, etc. 26 U. S. Stat. at Large, 903, as follows:

"On the ship William, Richard Barker, master, namely: William F. Gardner, administrator with the will annexed of Caleb Gardner, deceased, \$41,578."

There being a doubt as to the mode of distribution, a friendly suit was instituted. The bill and answers were filed October 19, 1891, and by request of parties the case was certified to the General Term to be heard in the first instance, on bill and answers.

Upon the representation that the decision would be likely to affect the actions of administrators in several awards, and facilitate the prompt distribution of money in which many parties were interested, the Court in General

Term ordered the case to be calendered, and set for hearing at an early day. The case was argued and submitted November 25, 1891.

C. G. LEE, for plaintiff, filed a brief and was heard in behalf of Wm. F. Gardner, in his capacity as administrator of William C. Gardner, and so interested to the exclusion of H. Audley Clarke, defendant, administrator of Mary Clarke.

This claim was unquestionably a part of the estate of Caleb Gardner at the time of his death and passed by his will. It also passed by Mrs. Phillip's will.

The fund in the hands of this administrator was paid him in satisfaction of a loss suffered, and not as a gratuity or bounty given to the living heirs of original claimant. Comegys v. Vasse, 1 Pet., 193, 215, 217; Erwin v. U. S., 97 U. S., 392; Phelps v. McDonald, 99 U. S., 298, 304; 3 MacA., 375; Bachman v. Lawson, 109 U. S., 659, S. C. 3, Sup. Ct. Rep., 479; Leonard v. May, 125 Mass., 455; U. S. v. Weld, 127 U. S., 51; Williams v. Heard, 140 U. S., 529; Grant v. Bodwell et al., Me., Atl. Rep., Vol. 7, 12.

WATSON BOYLE for Nannie F. Gardner, Administratrix, relied on the same authorities.

FRANK W. HACKETT for Henry Audley Clarke, administrator:

Congress is dealing directly with the present next of kin to the original sufferers.

The wills of Caleb Gardner and of Eliza G. Phillips play no part in the distribution of this award. The design of Congress, clearly evinced that the money shall go to the next of kin, overrides any fancied purpose of these two testators to dispose of a French claim, when it is not even referred to by either of them.

The plaintiff should be instructed, that the proceeds of the appropriation are to be distributed among those persons who, by the laws of Rhode Island, were next of kin to Caleb Gardner at the date of the appropriation, viz: March 3, 1891. Kingston's Estate, 25, Weekly Notes of Cases (Phila.) 254; Clement's Estate, 45 Legal Intelligencer, 478.

Mr. Justice COX delivered the opinion of the Court:

The bill in this case is filed for the purpose of having the court determine the proper distribution of one of the French Spoliation awards, under Chap. 540 of the laws of the Second Session, Fifty-First Congress, entitled, "an act making appropriations to supply deficiencies in the appropriations for the fiscal year ending June thirtieth, eighteen hundred and ninety-one, and for prior years, and for other purposes." 26 U. S. Stat. at L., 862.

One Caleb Gardner originally held the claim and by his last will and testament he gave and bequeathed all the residue of his estate to his two sons, Wm. Gardner and Samuel F. Gardner, and his daughters, Eliza Gardner, since Mrs. Phillips, and Mary Clarke. His daughter Mary Clarke was a half sister of the others. Mrs. Clarke died leaving descendants who are parties to this suit. Mrs. Phillips also died, but without children, and left a will by which she gave the whole of her estate to her two brothers, Wm. and Samuel Gardner, leaving out her half sister, Mrs. Clarke. In order to prosecute this claim, Wm. F. Gardner took out letters of administration on the estate of Caleb Gardner, and presented this claim in the Court of Claims and obtained an award, an appropriation was made, and the money has been collected by him. He paid one-fourth of the claim to the descendants of each of the sons and to the administrator of Mrs. Clarke, but a question has arisen as to the disposition to be made of the other one-fourth which would have gone to Mrs. Phillips if she had survived. The children of her two brothers claim this as a part of the estate of Caleb Gardner by virtue of his will, and of Mrs. Phillips' will, bequeathing her share of said estate to them, and that this one-fourth must therefore be divided between them. On the other hand, the descendants of the half-sister, Mrs. Clarke, claim that the appropriation was made by Congress not in payment of a legal claim which was recognized as the property of Caleb Gardner, but rather as a gratuity or bounty, and that it is limited to the *next of kin* of the original claimant, and the next of kin of Caleb Gardner are the descendants of Mary Clarke, as well as those of the two brothers. The only question, therefore, is, whether this one-fourth shall be divided into three parts—two parts among the descendants of the two sons, and one among the descendants of Mrs. Clarke, as the latter claim; or, shall be divided into two parts, one to the descendants of each of the brothers. The case, therefore, involves some interesting questions as to the nature of these claims, and the intention of Congress in making the appropriation.

A citizen of this country who suffers a wrong at the hands of a foreign nation does not thereby acquire a direct individual claim against that nation. He has a right to appeal to his own Government to obtain reparation for him. It makes a claim in its own name, as a national or international one, for a wrong committed against it in the person of its citizens whom it is bound to protect. It is the sole judge of the

propriety and expediency of making the demand. If it shall deem it proper, either on grounds of right or public policy, not to make the demand, this does not give him a cause of action against his own Government. If, however, his Government does demand and receive the indemnity, recognizes the private claim and provides for its adjudication and payment, then the question arises, who is entitled to the money? When changes have taken place in the condition of the original claimant or that of his estate, as where he is dead or has become bankrupt, etc., then the courts have held that the appropriation of the money to pay the claim is not to be treated as a mere gratuity, but as payment of a claim which was property of some kind in the hands of the owner. As the courts say, it was, at least, a possibility; and, therefore, when the original claimant became a bankrupt before an award was made, so that an assignment of his estate took place by operation of law, the courts have held that the assignment carried with it this kind of claim, and the bankrupt assignee, instead of the original claimant, was the party entitled to payment. And so, also, where the claimant has died, his personal representatives have been held entitled to prosecute and recover the claim. And this is about as far as the courts have gone in determining the rights of a party who has suffered an injury at the hands of a foreign government. Some of these principles will be found stated in several cases by the Supreme Court, as, for example, in the case of *Key v. Frelinghuysen*, 110 U. S. 71, and *Williams v. Heard*, 140 U. S., S. 529.

The first case in that court in which a question of this kind arose was that of *Comiegys et al. vs. Vasse*, 1 Peters, 193. In the treaty between the United States and Spain, of 1819, by which the territory of Florida was acquired by this Government, it was stipulated, on the part of the United States, that this Government would assume and pay certain claims of its citizens against Spain, for depredations by Spanish cruisers upon their shipping, and would appoint a commission to examine and adjudicate the claims.

An award was made in favor of a claimant, by the Commission so appointed. In the meantime, the claimant had become bankrupt, and his estate had been assigned to his bankrupt assignee, and this assignment was held to carry with it the claim against Spain. A similar ruling was made in the much later case of *Phelps vs. McDonald*, 99 U. S. S., 298, which related to a claim against the United States growing out

of the seizure of property of a British subject during the late war, and which was adjudicated by the British Claims Commission under the Treaty of Washington, and this claim also was held to have passed to the bankrupt assignee of the original claimant.

Doubtless the same ruling would have made as to claims against Mexico provided for in the treaty of Guadaloupe Hidalgo, of February 2, 1848, by the 15th Article of which the United States, exonerating Mexico from all claims of their citizens, undertook to make satisfaction for the same.

But the French Spoliation Claims would seem to stand upon an entirely different footing.

It is well known that these claims grew out of depredations on our commerce and illegal seizures and condemnations of vessels and cargoes, by the French, during the hostilities between France and Great Britain before the year 1800. These wrongs caused a great irritation in this country and led to a condition of quasi warfare between the two countries. This government made a claim for reparation for these wrongs, as an international wrong, and it was met with a counter claim, on the part of France, growing out of the treaty of alliance between France and the United States, of 1778, whereby the United States guaranteed to France security of her possessions in North America. At length, in September, 1800, a treaty was made between the two countries for the purpose of settling all matters in controversy between them by which, among other things, the two governments mutually renounced these opposing claims. The United States did not receive any money to be applied to these claims of its injured citizens, and did not stipulate, as in the treaty with Spain, to assume and pay the claims, but it simply renounced and abandoned its claim, as a nation, against France, in consideration of a similar renunciation, by France, of a very troublesome claim against the United States.

The claimants who had suffered the grievances before mentioned thereupon took the ground that the action of our Government amounted virtually to an appropriation of their property to public use and demanded compensation of the United States. Their claims have been before Congress for many years, and have been often favorably reported on, as well as acted on, in one or the other House, and even in both houses, but no act in relation to them has become a law, by which they are recognized as valid claims against the United States. The nearest approach to it was made by the

Act of January 20, 1885, 23 Statutes at Large, p. 283, which provides for submitting to the Court of Claims the claims of persons who claim indemnity from the French Government "arising out of illegal captures, detentions, seizures, condemnations and confiscations prior to the ratification of the convention between the United States and the French republic, concluded on the 30th day of September, 1800."

The act further provides "that the court shall examine and determine the validity and amount of all the claims included in the description above mentioned, together with the ownership," &c. "And they shall decide upon the validity of said claims according to the rules of law, municipal and international, and the treaties of the United States applicable to the same, and shall report all such conclusions of fact and law as, in their judgment, may affect the liability of the United States therefor."

Section 6th says: "Such finding and report of the court shall be taken to be merely advisory as to the law and facts found, and shall not conclude either the claimant or Congress."

In other words, Congress submitted these claims to the Court of Claims for its advice as to the law and the facts, but expressly reserved the right to follow or disregard the court's advice as they might think proper. And that Congress declined to follow the advice of the court, to its full extent, is perfectly apparent.

The Court of Claims held, in substance, that the action of the United States in regard to these claims fell within the constitutional provision for taking private property for public use and that Congress was bound, under this provision, to pay to the claimants what was fairly due on their claims that had been sacrificed in the manner mentioned.

This would make the claim property in the hands of the original claimants, transferable and transmissible like all other personal property of the nature of choses in action. If Congress had concurred in the finding of the court, as to the law, it would follow that if any original claimant had been a bankrupt, his assignee would be the party entitled to receive the award. But, in appropriating for the payment of awards, Congress has expressly provided that in cases of bankruptcy the award should be made to the *next of kin, instead of the bankrupt assignee*, thus ignoring the incident of ownership which the Supreme Court had held to attach to valid claims which had been recognized by the government. Again, if these were valid claims as held by the Court of Claims, they would pass by a voluntary assign-

ment by the claimant or by his will, and would be assets in the hands of his personal representatives for the payment of his debts. But Congress says that the award "shall not be paid until the Court of Claims shall certify to the Secretary of the Treasury that the personal representatives on whose behalf the award is made represent the next of kin." In other words, Congress says that the money shall not be paid to the executor or administrator for the benefit of creditors, or to assignees or legatees, but *only the next of kin*, which involves no recognition of legal property in the award, in the original claimant.

Now, it is obvious that Congress has placed these claims on a very different footing from those which we have before spoken of, as to which it has been held that money appropriated generally for their payment takes the same course as the other estate of the claimant. Congress has chosen to give this money a different direction. It may be plausibly said that there is no reason why Congress should prevent a claimant from bequeathing his claim to his own family, as was done in this case by a general bequest by Gardner of his estate. But if this might be done, he might also bequeath to a stranger, and if this right were conceded, it would be difficult not to concede all the other incidents of ownership, such as the right of assignment *inter vivos*, and the rights of creditors.

And Congress may well have thought that the only consistent course was to exclude all persons from participation in these awards except the immediate family of the deceased claimant, under the designation of "the next of kin."

It is not necessary, in this case, to determine whether the original claimants had a valid claim against the United States. It is sufficient, for the purpose of this case, that Congress, while apparently recognizing the losses of the claimant as the ground of a morally meritorious claim, has appropriated for it as if it were not a binding or legal claim, and as if the appropriation were more in the nature of a gratuity than of a satisfaction of a debt. It is entirely different from the appropriation for the Alabama claims, which the Supreme Court said, in *William v. Heard, supra*, was not a gratuity, and in which there was no attempt to control the distribution of the award.

It is somewhat like the case of an appropriation to the widow or children of a decedent on account of meritorious services rendered by the latter, which were yet not recognized as giving a legal claim.

It is not unlike, in principle, the legislation which gives to the administrator of a person whose death has been caused by the negligence of another, a right to recover damages for the injury, but confines the distribution of the damages recovered to the family of the deceased, instead of allowing them to go into his estate for the benefit of creditors.

Now, if Congress has not appropriated this money to the parties really entitled to it, all that follows is that their claims have not been satisfied by the appropriation and still remain unsettled. But this is not money received for the use of these claimants. It is the money of the United States which Congress could appropriate as it thought proper, and the court have no right to divert the appropriation from the parties in whose favor it was made to others to whom we might think it ought to have been given. We can only determine to whom it was given. And we have no difficulty in reaching the conclusion that it was intended for the benefit of those who were next of kin to the deceased original claimant at the time the award was made. We are glad to find that we are anticipated in this conclusion by the Orphans' Court in Philadelphia in a case to which our attention has been called. Clement's Estate, The Legal Intelligeneer, for November 20, 1891.

It follows that the fund in controversy in this case, being one-fourth of the award on the claim of Caleb Gardner is to be distributed into three parts—one-third to each son's descendants and one-third to those of Mrs. Clarke, their half-sister. *Decree accordingly.*

Plaintiff prayed a rehearing. His petition said the court holds that the claims known as the French Spoliation Claims are not just claims against the government of the United States and that the appropriation in this case and consequently of others made in the same act, amounting in the aggregate to one million three hundred and four thousand and ninety-five dollars and thirty-seven cents (\$1,304,095.37) were *gratuities or gifts* to the next of kin of certain persons.

1. The case was insufficiently argued, and the point on which the decision turns barely referred to at all.

2. The proviso of the act on which the decision is based, relates solely to the regulation of the Treasury Department, and the Court of Claims in making payment of the sums appropriated and in no way relates to the distribution of such sums after they have left the Treasury.

The court denied the application for rehear-

ing December 21, 1891, speaking through Mr. Justice Cox, as follows:

An application has been made for a rehearing in this case. The object of the suit is to have the court determine how one of the awards of the French Spoliation claims should be distributed among the representatives of the original claimant, and the court held that the act of Congress making the appropriation required it to be distributed among the next of kin. The application for a rehearing is made principally on the ground that the court decided in this case that these were not just claims against the United States. This is a misconception of what the court did. We did not undertake to decide that they were not just claims, but we simply held that the United States had carefully avoided recognizing them as legal claims against the United States, and have reserved the right to deal with them as they saw fit and undertook to distribute the money as they considered most equitable. Congress had a right to appropriate the money as they thought proper and they appropriated it without reference to the original justice of the claim. We are bound to say that under this act they gave it to the next of kin. We think that that is too plain for argument, and we accordingly adhere to the decision formerly made and overrule the application.

Supreme Court of Appeals of Virginia.

COMMONWEALTH

v.

LARKIN.

GENUINENESS OF COUPONS—ADMISSIBILITY OF EXPERT EVIDENCE.

Upon tender of coupons alleged to be cut from bonds of the State of Virginia, expert evidence to establish their genuineness cannot be allowed until it be shown that the witness is an expert, or testifies to such facts as show that the witness possesses such knowledge, experience and skill as entitles him to be considered an expert, and the testimony of the witness that he believed himself to be an expert, without showing that he possessed information, skill, or experience in printing, lithographing, or other matters (bonds and coupons being lithographed or printed) to enable him to test their genuineness, does not render his evidence admissible as that of an expert.

Decided November 19, 1891.

WRIT of error to a judgment of the Corporation Court of Lynchburg.

THE FACTS are stated in the opinion.

Mr. Justice FAUNTLEROY delivered the opinion of the Court:

This is a writ of error by the Commonwealth of Virginia to the judgment of the Corporation Court of the city of Lynchburg, in the trial of an indictment therein pending against W. W.

Larkin, had at the September term, 1890, for the violation of the revenue laws of the plaintiff in error.

The accused pleaded "not guilty," but he filed no special plea, and he relied upon an alleged tender of coupons. Issue was joined, and, under instructions asked for by the defendant and given by the court, the jury found him "not guilty."

Upon the trial the attorney for the Commonwealth tendered and obtained his bill of exceptions, as follows :

"The plaintiff, on the trial of this cause, to sustain the issue on its part, proves that the defendant, W. W. Larkin, was a duly licensed attorney-at-law, and was practicing as such without having a revenue license, as required by law; that he tendered to the treasurer of Lynchburg, in payment of his license-tax, papers purporting to be coupons cut from the bonds of this State, tax-receivable and past due; that the treasurer of the city of Lynchburg refused to receive them, because the statutes of Virginia prohibited him from receiving them; that he (the said treasurer) did not know whether they were genuine or not; that the bonds of this State, under the Funding Acts, required that said bonds should be signed by the State Treasurer and Auditor, and that the validity of the coupons depended on the proper and lawful issuance of the bond from which they were detached. The defendant, to sustain the issue on his part, proved that he tendered to the treasurer of the city of Lynchburg the amount of his license in coupons, which he believes to be genuine coupons, past due and tax-receivable, and cut from the bonds of this State; that he had never seen the bonds from which said coupons were cut, but that he had handled many thousand dollars' worth of coupons, and that he believed himself an expert, and believes the coupons tendered were genuine; that said coupons were still in his possession, and that he was ready to pay them over for his license; and thereupon he paid the same in court."

Upon this testimony, the court gave three instructions to the jury, the first of which was not objected to.

The second instruction is: "After the defendant showed he believed himself to be an expert in reference to the genuineness of the coupons tendered, and that he believed those to be genuine he tendered in this case, the burden of proving non-genuineness is shifted to the Commonwealth; and, if the Commonwealth do not show non-genuineness, the jury must find the defendant not guilty."

The plea of tender confessed the charge in the indictment that the license-tax imposed by law upon the accused had not been paid, and it could only be a good defense when fully and properly proved; the onus probandi as to the genuineness of the coupons tendered was upon the tenderer. He must prove everything necessary to constitute a legal tender. In support of his plea Mr. Larkin was the only witness for the defense, and he testified to no facts which showed him to be an expert, with knowledge, experience or skill which made him competent to testify as to the genuineness and tax-receivability of the coupons tendered by him in payment of his license-tax. He had never seen the bonds, or any bonds, from which they had been cut, and, for aught that he knew or testified, non constat, that they had ever been attached to any bond or legal obligation of the State of Virginia. They were mere printed or lithographed detached papers, which might have been printed or lithographed and put in circulation by irresponsible parties, either attached or unattached to simulated and unauthorized bonds. He merely expressed his belief that he was an expert, but he did not testify to any information, skill, or experience in printing, lithographing, or testing the genuineness of coupons, which could make him expert to detect and pronounce the spurious from the genuine coupon in circulation. Larkin's testimony was fatally defective, and it is clear, from the record, that he is not an expert as to the matter to which he undertook to testify, and that there was no expert witness before the jury; yet the instruction of the court to the jury was that, if he showed he believed himself to be an expert, the burden of proving the genuineness of the coupons tendered by him was shifted from him to the Commonwealth, who must prove the non-genuineness of the coupons tendered by him. As formulated, there was no evidence which called for this instruction, and none to support it. It does not propound the law of the case as proved to the jury; it is defective and vicious, and the trial court erred in giving it.

The third instruction told the jury, without prelude, explanation, or qualification: "Not necessary, independently of any collateral litigation, to establish the genuineness of coupons, before or after tender, to entitle a tenderer to be free from molestation."

This repeats the vice of the second instruction, and gives a charter ad libitum to tender spurious coupons, and to be exempt, absolutely, from all obligation or requirement of proof of genuineness.

The instructions were wholly erroneous, and misled the jury. The verdict must be set aside, the judgment reversed, and the case remanded to the Corporation Court of the city of Lynchburg for a new trial.

Judgment reversed.

Widow's Right to Priority in Respect of Legacies.

It is quite right that a man should provide for his wife; but there would seem to be no reason why, when his estate proves to be much smaller than the testator expected, he should be presumed to wish that his wife should take her legacy without any abatement, whilst the other legatees, possibly children have a deduction made from theirs. Vice Chancellor Malins is responsible for having given this preference to the widow of the testator in *In re Hardy*; *Wells v. Borwick*, 50 Law J. Rep., Chanc. 241; L. R. 17 Chan. Div., 798, and for having neglected, or rather practically overruled, Lord Hardwicke's decision in *Blower v. Morrett*, 2 Ves. Sen., 419.

Two learned judges have preferred to follow the Lord Chancellor's opinion in the two recent cases of *Cazenove v. Cazenove*, 61 L. T. Rep., N. S., 115, and *In re Schweder*; *Oppenheim v. Schweder*, 60 Law J. Rep. Chanc., 656. In the case before Lord Hardwicke the legacy was to be paid to the testator's widow immediately after his decease out of the first money belonging to him that should be got in after his death. His lordship was of opinion that that direction only related to the time of payment.

"He directs that, whereas the general rule of law is that legacies should not be paid until a year, this should be paid immediately. The consequence is, that if it is not then paid, it should carry interest immediately, which is always considered as a compensation for delay of payment, and puts her in the same condition as if it was paid." In *In re Hardy* the gift was to the wife to be paid to her immediately after his decease. The Vice Chancellor said that, with the greatest respect to Lord Hardwicke, he dissented from his decision, and would not follow it unless compelled by the Court of Appeal.

Vice Chancellor Malins may have systematically disregarded *Blower v. Morret* when similar questions came before him, but Mr. Justice Kekewich did not see his way to do so and held that a legacy of £1,000 to be paid to his widow immediately after the testator's

death for her immediate wants must abate with the others legacies.

Mr. Justice Chitty in *In re Schweder*, where the legacy was to the testator's wife, "to enable her to provide and furnish a suitable home and to defray any other expenses," and was to be paid to her within three months of his death, decided against the widow's priority. In spite of the Vice Chancellor's view, *Blower v. Morret* is therefore still law, and likely to remain so. If given in lieu of dower apparently the widow can claim priority, as she has in that case, so to speak, purchased the legacy.—*London Law Journal*.

Professional Caution.

In English novels there is no more clearly defined typical character than the family solicitor. He is probably the most old-maidish person of fiction, somberly clad, patient, punctilious and cautious. That such type of character is a natural fruit of a legal environment is shown by the tendency to evolve specimens of it in the larger cities of America. With minor variations upon the family pattern produced by our different social system, American cousins of Mr. Tulkinghorn are frequently met with nowdays in New York and Boston.

It is inevitable that lawyers should be constitutionally conservative and cautious. The whole genius of the law is historical. Lawyers are constantly engaged in applying to new facts as they arise rules of action which are actually behind the times. Law reform does, of course, make constant progress, but it never keeps pace with the advanced thought of the age, and is apt to be somewhat behind the demands of the average thought of the age. The practical work of the profession almost unavoidably tends to an abnormal development of the bump of caution. Lawyers are always endeavoring to guard against imaginary perils and unseen foes. In conveyancing, for instance, the inquiry is, what has been overlooked which some more astute or more finical attorney will hereafter bring up against the title. In litigated business, there is the advantage that one has a personal adversary who must present a tangible plea, but even here a lawyer can never tell on going into a trial what startling surprises the other side has kindly prepared to vary the dull monotony of his life or how far his client has kept crucial little pieces of evidence in the background, only to have them drawn out painfully but with great effect by his learned opponent. There is neces-

sarily such a large prudential element in professional life that, with many practitioners as they grow older and fixed in habits, caution becomes a disease. It has often been charged that lawyers as a class are cowardly even with regard to agitating reforms peculiarly affecting their own interests.

While there is no calling less adapted to hot-spur temperaments than the law, and while a certain kind of success may be gained by following routine faithfully and carrying prudence to the point of cowardice, yet at the bar, as in every other field, the real triumphs are won by boldness and originality. In the management of trials the extremely cautious men are those who generally have excellent excuses for not winning verdicts. In conducting a case before a jury an excellent motto may be found in the ancient saying:

"Be bold, be bold, be bold, be not too bold."

Reckless assurance and a disposition to domineer over rather than reason with the jury are, of course, suicidal. But all the world loves and respects, and is inclined to side with a modestly brave man.

In practice the principal field for heroic treatment is offered by the weak points of one's own case. How much better to contrive to have your client voluntarily tell the truth about some damaging feature which must come out, than to have it drawn from him piecemeal on cross-examination with the additional stigma of attempted concealment! Public sentiment will always condone much in a man who owns up to sins and professes to regret them. It is of the utmost importance, therefore, to get the benefit of such attitude on the part of the jury; and a case involving features which one of the parties is or ought to be ashamed of should never be handled in a timid or halting manner.

One of the most notable instances of successful boldness *at nisi prius* that ever came to our knowledge occurred on a trial where one of the parties had told a straight enough story on his direct, but was so badly riddled on cross-examination that the jury would have been obliged to conclude he was either a knave or a fool. There was other evidence in the case sufficient to support a verdict, and his counsel on redirect set himself to neutralizing the bad effect of the plaintiff's own testimony and appearance. This the learned gentleman did by making his client out the most extraordinary fool in Christendom. With rare tact, so as not to let the jury take the cue, he twisted and turned the

poor victim on the rack, causing him to contradict and stultify himself in numberless points, the lawyer meanwhile simulating impatience at client's stupidity. Probably he made use of private knowledge of the mental make-up of the witness, thus being enabled the more effectually to confuse him. The most ludicrous feature of the performance was that the client was finally worked up to such a pitch of wrath that it seemed not improbable he would thrash his own lawyer "after school." He cooled down when the verdict in his favor was announced, but it is safe to say that he has never to this day adequately appreciated the services rendered him in that litigation.—*New York Law Journal.*

Damages for Refusal to Cash Check.

In *Schaffner v. Ehrmann*, decided in the Supreme Court of Illinois, in October, 1891, it was held that a banker refusing to cash a check, drawn by one of his depositors who has sufficient funds on deposit to meet the same, is liable in substantial damages, though the failure to honor the check occurred through a mistake and there is no proof of malice or special damage. Such action is by the authorities similated to one for slander. The opinion is printed in full in 28 N. E. Rep., 917. The court said in part:

"We are of the opinion that the conclusion in that case was reached by proper reasoning. It is well understood that in an action of slander by a person for the speaking of slanderous words of him in the way of his trade the fact that he is a trader takes the place of special damages. To return a check marked 'refused for want of funds,' to the holder, especially through a clearing house, certainly tends to bring the drawer of that check into disrepute as a person engaged in mercantile business; and it needs no argument to show that a single refusal of that kind might often, and frequently does, bring ruin upon a business man; and yet it is no more possible in either case to prove special or actual damages than it is for one charged with the commission of a crime to show specifically in what manner he has been injured. It is said, however, that in an action of slander the recovery is had because of slanderous words spoken maliciously, and here it is said there was no malice whatever. While is true that in slander, malice is the gist of the action, yet the term 'malice' is always used in such cases in a legal sense. As was said by Bayley, J., in *Bromage v. Prosser*, 4 Barn. & C., 247,

which was an action for slander of a bank, the words being, in substance, that it had stopped payment, 'malice,' in common acceptation, means ill-will against a person, but in its legal sense it means a wrongful act, done intentionally, without just cause or excuse. And if I traduce a man, whether I know him or not, and whether I intend to do him injury or not, I apprehend the law considers it as done of malice, because it is wrongful and intentional. It equally works an injury whether I mean to produce an injury or not; and if I had no legal excuse for the slander, why is he not to have a remedy against me for the injury it produces? So here the bank wrongfully refused to pay the checks of the appellee. That refusal was intentional, and without just excuse. There was, therefore, all the elements of legal malice, although there might have been no intention to injure the appellee. See *Starkie, Sland. & Lib.*, 191; *Com. v. Bonner*, 9 Metc. Mass., 412. We cannot say that the damages allowed in this case were excessive, under all the circumstances proven. The judgment of the appellate court will be affirmed."

Unclaimed Money.

The immense sums of money, belonging to suitors in chancery in England, which remain unclaimed can scarcely be credited. A part of the surplus interest—namely, £100,000, has been applied towards the erection of the Royal Courts of Justice in London, and although, owing to an increased spirit of research, large sums have been withdrawn, the balance is still enormous. The Crown received, during the year 1890, over £55,000 by reason of estates reverting to it. The unclaimed dividends upon Colonial stocks amounted to £150,000, and the unclaimed naval prize money to £257,000.

A recent advertisement calls for the representatives of owners of shares in the West New Jersey Society, no dividends having been paid upon the shares since the year 1692, nearly two centuries. Should descendants of those original shareholders ever be discovered, or discover themselves, their windfall will be something very large. In an action a few years since, the plaintiff, the descendant of an original stockholder in the defendant company, made out his claim to £100 of stock, which with accrued dividends since the year 1760 amounted to £3,600.—*Canada Law Journal.*

Law Blanks at the Law Reporter 503, E.

Libel and Slander—Damages.

Where the proprietor of a newspaper publishes, without inquiry as to its authenticity, an item from a news agency, falsely stating that a certain named man and woman of high respectability have eloped, that the intimacy between them had for some time excited comment, etc., he is guilty of reprehensible negligence, and though not guilty of malice the jury may, in an action against him for libel and slander, award punitive or exemplary damages. The publication of the article was not prompted by any personal malice toward the plaintiff or the other persons mentioned. But the defendant was guilty of reprehensible negligence in publishing it without making any effort to verify its truth. The injury to the reputation of the plaintiff was probably insignificant, but the jury undoubtedly thought that a newspaper manager who would publish such an article, one in which the good name of a decent woman was trailed in the mire, without any attempt at independent investigation to ascertain whether it was true or false, was guilty of a wanton act, and that the facts warranted such a verdict as would be an example to deter other newspaper managers from similar conduct. Reckless indifference to the rights of others is equivalent to an intentional violation of them, and in actions of libel, where the facts show the publication of a defamatory article without any excusable motive, and without any attempt to inquire into the truth of the facts stated, the jury are authorized, for the sake of public example, to award punitive or exemplary damages.

The present verdict (\$4,000) is a severe one, and if it had been for a less amount would have vindicated the plaintiff and sufficiently punished the defendant, but questions of damages belong peculiarly to the jury, and the court will not set aside a verdict simply because it may be dissatisfied with the amount rendered. U. S. Circ. Ct., S. D. N. Y., July 15, 1891. *Rutherford v. Morning Journal Assn.* Opinion by Wallace, J. 47 Fed. Rep., 487.

Judge—"You say your father died from a sudden shock to his system. Was he an electrician?"

Prisoner—"No. He fell from a scaffold."

Judge—"Oh, a bricklayer, was he? Was it his own fault?"

Prisoner—"I think it was the sheriff's fault, your Honor."—*Legal Adviser.*

Cats.

Cats are not of any very great importance in the eye of the law in this part of the nineteenth century. In studying legal history we find, about the beginning of the tenth century, Howel Dda, or Howel the Good, a conspicuous king in South Wales, in the government of which he succeeded his father Cadell. He inherited from his mother, Elen, possessions in Powis, and his influence seems to have been powerful throughout North Wales. Perceiving the laws and customs of the country to be violated with impunity, he summoned the archbishops, bishops, nobles, and other chosen men to meet at Y. Ty. Gwyn ar Day with him. After spending all Lent in prayer and fasting, he selected from the whole assembly twelve of the most experienced persons, and adding to their number a doctor of laws, named Blegywryd, committed to them the task of examining, retaining, expounding, and abrogating the laws. The work when completed was sanctioned by Howel, and duly promulgated; and maledictions were pronounced on those who did not observe them as they were set forth, unless they were altered by the concurrence of the country and the lord. Wales being of some size, before long local customs arose, somewhat differing; ideas differed, and so the versions of the laws. Hence we have three separate codes—the Venedotian, which was in force in North Wales; the Dimetian, in West Wales, and the Gwentian in the Diocese of Landav.

The provisions in these codes concerning cats we wish to relate.

In the Venedotian Code (chap. xi, book iii) we find: 1. "Guerth kenen cath ew or nos y ganer hyt yny agoro y lygeit keinhaoe kyfreith," &c., which being interpreted into the vulgar tongue means, "the worth of a kitten from the night it is kittened until it shall open its eyes, is a legal penny; and from that time until it shall kill mice, two legal pence; and after it shall kill mice, four legal pence; and so it shall always remain."

The penny, we may point out, was by the code, the value of a lamb, a kid, a goose, or a hen; a cock or a gander was worth twopence; a sheep or a goat, fourpence. "4. The teithi [or qualities] of a cat are, to see, to hear, to kill mice, to have her claws entire, to rear and not to devour her kittens; and if she be bought, and be deficient in any one of these teithi [qualities] let one third of her worth be returned."

The Dimetian and the Gwentian codes (doubt-

less) very properly draw a distinction between cats and cata. The former says (book ii, chap. xxxii)—to save the proof-reader we will only give the English,—1. “The worth of a cat that is killed or stolen, its head is to be put downward upon a clean even floor, with its tail lifted upwards, and thus suspended, whilst wheat is poured about it, until the tip of its tail is covered; and that is to be its worth; if the corn cannot be had, a milch sheep, with her lamb and her wool, is its value; if it be a cat which guards the King’s barn. 2. The worth of a common cat is four legal pence.” The Gwentian Code had it thus: 1. Whoevershall kill a cat that guards a house and a barn of the King, or shall take it stealthily, it is to be held with its head to the ground, and its tail up, (*capite deorsum posito, et cauda sursum erecta,*) the ground being swept, and then clean wheat is to be poured about it, until the tip of its tail be hidden, and that is its worth. 2. Another cat is four legal pence in value.”

The attentive student will observe that neither Howel Dda nor his legal adviser Blegy-wryd made any provision for the possible case of the King intrusting his granary to the care of a Manx cat.

According to the Dimetian Code, “whoever shall sell a cat is to answer for her not going a caterwauling every moon, and that she devour not her kittens, and that she have ears, eyes, teeth, and nails, and is a good mouser.” The Gwentian version says: “The teithi [qualities] of a cat are, that it be perfect of ear, perfect of eye, perfect of teeth, perfect of tail, perfect of claw, and without marks of fire, and that it kill mice well, and that it shall not devour its kittens, and that it be not caterwauling on every new moon.” Manx cats are ruled out here. At what stage of the moon’s waxing do American cats chiefly caterwaul? The vendors of every cat in our neighborhood would be liable for breach of the implied warranty as to non-caterwauling were the laws of Howel the Good now in force. Under the Gwentian Code the damages for breach of warranty and the legal worth of the cat were co-equal.

One cat was necessary to make a lawful hamlet, together with nine buildings, one plough, one kiln, one churn, and one bull, and one cock, and one herdman (Welsh Laws, book xiv, chap. xxxiii).

The tail, eyes, and life of a cat were considered of equal value (Gwentian Code, book ii, chap. xxxix.). The milk of a cat was deemed worthless, and no satisfaction had to be made

on account of it (Dimetian Code, book ii, chap. viii.). If a cat was caught mousing in a flax-garden, the owner had to pay all damages. When a husband and wife separated, the goods and chattels were carefully divided, and the husband took the cat, if there was but one; if there were others, the wife had them (Dimetian Code, book ii, chap. xxv and viii).

Cats are not so much thought of in these days of mouse traps, and in this land where we have no king’s barns, and therefore no *custos borei regii*. In fact, it has been decided to be libellous in Georgia to say that a young lady said that her mamma acted like a cat purring and mewing, and assuming the attitude of a cat in the effort to catch rats, and such like things. Stewart v. Swift Specific Co., 76 Ga., 280. A dozen years or more ago a cat figured in the sheriff’s court at Perth, Scotland; the cat had killed the plaintiff’s carrier pigeon on a neighbor’s premises. The learned sheriff in his judgment said: “It is quite legitimate for the pursuer (i. e., the plaintiff, not the cat) to keep a pigeon, but just as much so for the defender to keep a cat. The latter is more a domestic animal than the pursuer’s bird. But there are no obligations on the owner of a cat to restrain it to the house. The pursuer’s plea is that the natural instinct of the feline race is to prey upon birds as well as mice. So it was argued that the owner of the cat should prevent the possibility of its coming into contact with its favorite sport. But it is equally true that the owner of a bird should exercise similar precaution to prevent it coming within the range of a hostile race. If the defender’s cat had trespassed into the pursuer’s house or aviary where the bird was secured, there might be ground for finding the owner of the cat liable for the consequences of its being at large. With parity of reason, had the bird intruded itself upon the territory of the cat and there been slain, there could have been no recourse, because the owner of the bird should have prevented its escape. In the present case it appears that both the quadruped and the winged animal were in trespass, both were on neutral territory, being the green of a neighboring proprietor. It was the duty of the pursuer to take the guardianship of the bird said to be so valuable, and therefore both owners are in equal blame, and the case must be viewed as arising from natural law, for which neither owner without culpa can be answerable. The defender having at first not sympathized with the loss of the pursuer, but rather put him at defiance, and forced him to prove that it was the defender’s cat who slew his bird, the de-

fender will be assailed (acquitted) but without costs. *Webb v. McFeat*, 22 Jour. of Jur., 669.

Another Scotch judge has recently decided that a man who sets a dog to chase a cat in a public street acts negligently and without due care for passers-by, and is liable in damages for injuries to a child knocked down by the excited dog. 44 A. L. J., 20.

Once upon a time an old lady who lived by herself kept a multitude of cats; these she provided with regular meals, and furnished them daily with plates and napkins. She died, and it was held, in a discussion over her will, that such fancies as hers were no certain indications of insanity. *Redfield on Wills*, i, 84. The will of another lady who died in London about sixty years ago, contained the following bequests: "I bequeath to my monkey, my dear and amusing Jacko, the sum of £10 sterling per annum, to be employed for his sole use and benefit; to my faithful dog Shock and my well-beloved cat Tib, a pension of £5 sterling; and I desire that in case of the death of either of the three, the lapsed pension is to pass to the other two, between whom it is to be equally divided." The bequests were not set aside. *Proffatt, Curiosities and Law of Wills*, 78. In modern Egypt funds have been bequeathed for the support of cats, in compliance with which these animals are daily fed in Cairo at the Cadi's court and the bazaar of Khan Khaleel, like the pigeons in the Square of St. Mark's.

"Cats" should certainly end with tails; and behold, is there not a fitting tale at page 506 of the first volume of this "useless but entertaining magazine for lawyers"?—By R. VASHON ROGERS, in *Green Bag*.

THE COURTS.

Supreme Court of the District of Columbia.

IN EQUITY—New Suits.

13629. *B. L. Walker et ux. v. Alvenia Osborne et al.* To sell real estate. Com. sol., Leo. Simmons.

13630. *Anna Doyle v. Jacob D. Doyle.* For divorce. Com. sols., P. B. Thompson, jr., and J. M. Vale.

December 30.

13631. *Maria L. Davidson v. T. L. Davidson et al.* For specific performance. Com. sol., W. P. Williamson.

13632. *E. B. Bruce et al. v. G. B. Mickum et al.* To annul assignment. Com. sol., F. P. B. Sands.

13633. *Mary A. Sanford et al. v. C. V. N. Callan et al.* To substitute trustee. Com. sol., Peleg E. Dye.

13634. *Jno. M. Lackey.* To change name. Com. sol., Job Barnard.

13635. *Lydia Henry, alleged lunatic.* Upon petition of Commissioners D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazleton.

13636. *Rebecca Buller, alleged lunatic.* Upon petition of Commissioners D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazleton.

December 31, 1891.

13637. *Jas. S. Edwards et al., trustees of Saml. Norment, deceased, v. Jos. Baldwin et al.* For conveyance. Defts. sol., M. Ashford.

January 4, 1892.

13638. *The National Bank of Jefferson, Texas, v. James H. Coster.* For injunction. Com. sols., Van H. Manning and Duane E. Fox.

13639. *Josephine Stewart et al. v. Chas. F. Woods et al.* To vacate sale, pt. lot 13, sq. 154, and for injunction. Com. sol., J. H. Smith.

13640. *Frances Pierchynski v. Andrew Pierchynski.* For divorce. Defts. sol., Jno. A. Clarke.

January 5.

13641. *Aaron Straus v. Travis Glascoe et al.* Judgment creditor's bill. Com. sol., D. S. Mackall.

January 6.

13642. *Wm. Safford, alleged lunatic.* Upon petition of Commissioners D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazleton.

13643. *Wm. Wright v. Jno. C. Ingersoll.* For receiver. Com. sols., McDonald, Bright & Fay.

AT LAW—New Suits.

December 23.
32470. *Thomas Reddington v. H. W. Andrews.* Account, \$192.00. Pliffs. atty., E. B. Hay.

December 24.
32471. *W. E. Matthews v. Whitfield Jackson et al.* Note, \$500. Pliffs. atty., C. G. Berryman.

December 26.
32472. *R. J. Allen et al. v. R. E. Hudson.* Account, \$153.60. Pliffs. attys., J. A. Barthel and A. H. Bell.

December 28.
32473. *O. M. Bryant v. Thos. W. Widdicombe.* Judgment of Justice Strider, \$60.60.

32474. *Jno. A. Baker v. Thomas W. Widdicombe.* Judgment of Justice Taylor, \$33.20.

32475. *M. McDevitt v. N. Schlegel.* Replevin. Pliffs. atty., E. R. D. Mayne.

32476. *R. T. Mann v. Phil. Corder.* Account, \$67.22. Pliffs. attys., Ralston & Siddons.

32477. *The Supplee Hardware Co. v. The Columbia Guano and Phosphate Co.* Account, \$201. Pliffs. attys., Garnett & Mackall.

December 29.
32478. *I. Kauffman & Co. v. M. Alexander.* Account, \$282.75. Pliffs. atty., W. H. Sholes.

32479. Libbey, Bittinger & Miller v. Julian W. Deane et ux. Note, \$1,166.10. Pliffs. atty., Wm. F. Mattingly.

December 31.

32480. Frederick Funston v. Antoinette R. Perlis. Damages, \$10,000. Pliffs. atty., Geo. K. French.

32481. Oscar M. Bryant v. T. W. Widdicombe. Judgment of Justice Strider, \$70.74.

January 2, 1892.

32482. W. B. Moses & Son v. Whitman Dunbar. Notes, \$292.19. Pliffs. attys., Cole & Cole.

32483. R. F. Hill v. Edward B. Moon. Note, \$31.13. Pliffs. attys., A. H. Garland and H. J. May.

32484. W. C. Dodge v. The District of Columbia. Damages, \$2,000. Pliffs. attys., Cook & Sutherland.

January 4.

32485. The administrators of Jas. Keith Edwards v. Henry D. Cooke. Account, \$1,375. Pliffs. attys., Edwards & Barnard.

Legal Notices.

Rule of Court.

RULE 20. * * * Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

FIRST INSERTION.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Christine Cecilia Coleman,
and Francis E. Richards
vs. No. 18,471. Eq. Doc. 32.

Alexander Webster Richards.

Joseph J. Darlington and W. Woodville Flemming, the trustees in the above entitled cause, having reported to the Court that they have sold the real estate in these proceedings described, being original lot numbered six (6) in square numbered seven hundred and forty-two. (742), the north-western portion of said lot to Christine Cecilia Coleman for eighteen hundred and twenty-five (\$1,825) dollars; the south-west portion to Francis E. Richards for eighteen hundred and twenty-five (\$1,825) dollars, and the eastern portion of said lot six (6) to Jefferson B. Cralle for two thousand and fifty-three (\$2,053) dollars, making a total of five thousand seven hundred and fifty-three (\$5,753) dollars: It is by the Court, this 4th day of January, 1892, ordered that said sale be ratified and confirmed unless cause be shown on or before thirty days after the date thereof.

Provided a copy of this order be published in the Washington Law Reporter for three successive weeks prior to the expiration of said thirty days.

A. B. HAGNER, Justice.
J. R. Young, Clerk.

1 By M. A. Clancy, Asst. Clerk.

[Filed January 4, 1892. J. R. Young, Clerk.]

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of GEORGE WHITE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 30th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of December, 1891.

JOHN C. HEALD,
900 F St. n. w.

Legal Notices.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of JOHN HOOVER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 31st day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 31st day of December, 1891.
ARTHUR A. BIRNEY.
458 Louisiana ave.

1

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of January, 1892.

J. Henry Hentz Sr. et al. vs. No. 18,506. Docket 33.

Alice K. Seligson et al.

On motion of the complainants by Thomas M. Fields, their solicitor, it is ordered that the respondents, THE UNITED SECURITY LIFE INSURANCE AND TRUST COMPANY of Pennsylvania, and CONSTANTINE H. WILLIAMSON, trustee, cause their appearance to be entered herein on or before the first rule-day, occurring forty days after this day; otherwise this cause will be proceeded with as in case of default.

The object of this suit is to administer the estate of Herman A. Seligson, deceased, and to sell lot 166 and part of lot 156 in Beall's addition to Georgetown; subdivision lot 35 in Square 523, and land in Johnson County, Kentucky, to pay the debts of said deceased.

A summons duly issued to the said respondents was returned "not to be found," on December 1, 1891.

By the Court. A. B. HAGNER, Asso. Justice.
A true copy. Test: J. R. Young, Clerk.

1 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of January, 1892.

J. Henry Hentz, Sr., et al. vs. No. 18,506. Docket 33.

Alice K. Seligson et al.

On motion of the complainants by Thomas M. Fields, their solicitor, it is ordered that the respondents, THE UNITED SECURITY LIFE INSURANCE AND TRUST COMPANY of Pennsylvania, and CONSTANTINE H. WILLIAMSON, trustee, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise this cause will be proceeded with as in case of default.

The object of this suit is to administer the estate of Herman A. Seligson, deceased, and to sell lot 100 in Groff's subdivision of square 190, to pay the debts of said deceased.

A summons duly issued to the said respondents was returned "not to be found," on December 1, 1891.

By the Court. A. B. HAGNER.
A true copy. Test: J. R. Young, Clerk.

1 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of January, 1892.

The Washington Loan and Trust Co. vs. No. 18,583. Eq. Doc. 33.

Thomas V. Hammond et al.

On motion of the plaintiff, by Mr. John B. Larner, its solicitor, it is ordered that the defendants, WILLIAM McCALLUM, AGNES McCALLUM, and the unknown heirs of ANDREW McCALLUM, deceased, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to declare a certain deed in fee simple to part of lot 37 in Susan E. Cunningham's subdivision of lots in square 99, Washington, D. C., from the said defendant Hammond to said Andrew McCallum, deceased, a mortgage, and for sale of said property for payment thereof.

Said notice to be published once a week for each of four successive weeks in The Washington Law Reporter and The Evening Star and New York Herald.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
1-4t. By M. A. Clancy, Asst. Clerk.
[Filed January 6, 1892. J. R. Young, Clerk.]

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

J. Henry Hentz, Sr., et al. vs. Alice K. Selligson et al. } Equity, 13,507. Docket 83.

It appearing to the court that summonses were issued in this cause to the respondents, Hugh Nelson, trustee, and Rose B. Ickis, and that same were duly returned "not to be found," on December 1, 1891; and that said respondents have neither appeared nor answered thereto: It is, by the Court, this 6th day of January, A. D. 1892, upon motion of Thomas M. Fields, solicitor for complainants, ordered that the said respondents cause their appearance to be entered herein on or before the next rule-day occurring forty days after this date; otherwise this cause will be proceeded with as in case of default.

The object of this suit is to administer the estate of Hermann A. Selligson, deceased and to sell lots 125 and 126 in Brown's subdivision of Mount Pleasant to pay the debts of said deceased.

By the Court. A. B. HAGNER.
True copy. Test: J. R. Young, Clerk.
By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 7th day of January, 1892.

Edward T. Mathews et al., Trustees, vs. Rachel B. Mathews et al. } In Equity. No. 13,628.

On motion of the complainants, by Mr. W. Mosby Williams, their solicitor, it is ordered that the defendants, RACHEL B. MATHEWS, CHARLES S. MATHEWS, MINNIE M. MATHEWS, CHARLES W. HAYES, SOPHIA S. CHAPPELL, WILLIAM CHAPPELL, LOUISA C. POLK, TRUSTEN POLK, ELIZA A. MATHEWS, CHARLES A. MATHEWS, MARY D. M. MATHEWS, ANDREW S. MATHEWS, WILLIAM B. MATHEWS, GEORGE W. MATHEWS, ABBIE C. MATHEWS, MARY C. MATHEWS, LAURA MANDEVILLE and HENRY C. MANDEVILLE, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day, otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a decree for sale to make partition of original lot numbered three (3) in square numbered four hundred and eighty-eight (488) in the city of Washington, District of Columbia, of which William Fenrose Mathews, the elder, died seized as alleged in the bill.

A. B. HAGNER, Justice.
True copy. Test: J. R. Young, Clerk.
By M. A. Clancy, Asst. Clerk.
[Filed January 7, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

John Van Ness Philip vs. Eliza W. Philip et al. } No. 13,317. In Equity.

Charles Worthington, trustee in the above entitled cause, having reported the sale by him of part of square numbered five hundred and ninety-five in the city of Washington, District of Columbia, contained within the following metes and bounds, to wit: Beginning for the same at a point one hundred and twenty-seven feet six and one-half inches south, on the east line of said square, from the north east corner thereof, and running thence west and parallel with the north line of said square one hundred and seventy-two feet; thence south one hundred and sixty-two feet three and one-half inches to the south line of said square; thence on said south line east one-hundred and one feet one inch to the south east line of said square; thence on said south east line north east to the east line of said square and thence in a straight line north to the beginning, to Samuel Bensinger at and for the sum of five thousand seven hundred and sixty-seven dollars and sixty cents; it is by the Court this 4th day of January, A. D. 1892, ordered that said sale be finally ratified and confirmed unless cause to the contrary be shown on or before the 4th day of February, A. D. 1892.

Provided a copy of this order be published in the Washington Law Reporter for three successive weeks prior to said day.

A. B. HAGNER, Justice.
True copy. Test: J. R. Young, Clerk.
By L. P. Williams, Asst. Clerk.
[Filed January 4, 1892. J. R. Young, Clerk.]

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

John F. Vogt et al. vs. Wilbur J. Allen et al. } Equity. No. 13,312.

Edward H. Thomas and Henry F. Reh, the trustees appointed in this cause, having reported heretofore to the Court that they have sold the real estate in said cause, being part lot 2, square 527, to Louis Bernan for \$2,550, it is by the Court, this 6th day of January, A. D. 1892, in lieu of the former order nisi, ordered: that said sale be ratified and confirmed unless cause to the contrary thereof be shown on or before the 2d day of February, A. D. 1892.

Provided a copy of this order be published once a week for each of three successive weeks prior to said last mentioned day in the Washington Law Reporter.

(Signed) A. B. HAGNER.
A true copy. Test: J. R. Young, Clerk.
By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of January, 1891.

Doris Grupe, Plaintiff, vs. Nettie Ortenstein et al., Defendants. } No. 13,622. Docket 83. Equity.

On motion of the plaintiff, by Mr. E. H. Thomas, their solicitor, it is ordered that the defendants, NETTIE ORTENSTEIN, HENRIETTA ROSENSTOCK, MAX MILLER, HERMAN MILLER, TONI MILLER, and JACOB MILLER, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day, otherwise the cause will be proceeded with as in case of default.

The object of this suit is to substitute a trustee in the place of Nehemiah H. Miller, deceased, trustee named in deed of trust on lots 1, 2, 19 and 20, square 580, Washington City, District of Columbia.

By the Court. (Signed) A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Emma B. Morrice, Complainant, vs. Mary Burdette et al., Defendants. } No. 13,345. In Eq. No. 82.

The trustee herein, Benjamin F. Leighton, having reported a sale of the real estate in these proceedings described, to wit, the East 18 feet on D street of lot 1 in square 580, by the full depth thereof, to Patrick Smyth, for the sum of \$2,700, and the 18 feet 6 inches on D street next adjoining the East 18 feet of said lot 1 in square 580, by the full depth of said lot, to the said Patrick Smyth, for \$1,595.68, and the South 14 feet by the full depth of lot 14 in square 580 to Emma B. Morrice, for \$1,775.00. It is, this 30th day of December, A. D. 1891, ordered, adjudged and decreed that said sales be, and the same are hereby ratified and confirmed, unless cause to the contrary be shown on or before the 30th day of January, A. D. 1892.

Provided a copy of this order be published once a week for three successive weeks before that day in the Washington Law Reporter.

W. S. COX, J.
True copy. Test: J. R. Young, Clerk.
By L. P. Williams, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

January 2, 1892.

In the matter of the Estate of VIRGINIA ROULOT, late of the City of Washington, D. C., deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Jacob Lefo, of the City of Washington, D. C.

All persons interested are hereby notified to appear in this Court on the 29th day of January, next, at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter, and Evening Star, previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.

1 W. K. Duhamel, Proctor.

Legal Notices.

SECOND INSERTION.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphan's Court Business, Letters of Administration on the personal estate of ADOLPH MILLER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of December, 1891.

53 Leon Tobriner, Proctor. EMMA MILLER, 1205 20th St. n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphan's Court business, Letters Testamentary on the personal estate of MOUNTJOY BARRY HANSON, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of December, 1891.

53 Wm. M. Offley, Proctor. ALBERT B. BIBB, 1824 F St. n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphan's Court business, Letters of Administration, c.t.a. on the personal estate of HENRY F. BREUNINGER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 26th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of December, 1891.

53 Edwards & Barnard, Proctors. ALLEN S. JOHNSON, 1240 9th St. n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphan's Court Business.

December 29th, 1891.

In the case of Job Barnard, Administrator c. t. a. of STEWART J. GAAS, deceased, the Administrator c. t. a. aforesaid has, with the approval of the Court, appointed Friday, the 29th day of January, A. D. 1892, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator c. t. a. will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test :

L. P. WRIGHT.
Register of Wills for the District of Columbia.

53 No. 4246. Ad. D. 16. Edwards and Barnard, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Daniel R. Case

vs. { Equity No. 18,202.

Anna R. Case et al.

Edward S. McCalmont, the trustee herein, having reported to the court, that he has sold the property described in the proceedings in above cause, to wit, lots 138, 139 and 140 of John B. Alley and William Sharon's recorded subdivision of Square No. 155, in the city of Washington, D. C. at public auction to A. E. Culver for \$45,000; and it being represented that said Culver has assigned all his rights in such purchase to Daniel R. Case; it is, this 24th day of December, 1891 ordered, that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 25th day of January, A. D. 1892.

Provided a copy of this order be published in the Washington Law Reporter once a week for four successive weeks before said last mentioned date.

A. B. HAGNER.

A true copy. Test :

J. R. Young, Clerk.

52-4

By M. A. Clancy, Asst. Clerk.

[Filed December 24, 1891; J. R. Young, Clerk.]

Legal Notices

The Maryland Coal Company }
v. { At Law. No. 26,125.

A. M. Brandt.

Upon application of M. F. Morris, attorney for the plaintiff in the above entitled cause, it is by the Court this 29th day of December, A. D. 1891, ordered that the defendant, A. M. Brandt, employ new counsel to represent him in the said cause, on or before the 29th day of January, A. D. 1892.

Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said day.

Test :

J. R. Young, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
The 31st day of December, 1891.Mary F. Anderson }
v. { No. 13,537. Eq. Docket, 33.

John A. Anderson.)

On motion of the plaintiff, by Mr. John Cruikshank, her solicitor, it is ordered that the defendant, JOHN A. ANDERSON, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to procure a decree of divorce from the bond of marriage now subsisting between the plaintiff and the defendant.

By the Court.

W. S. COX, Justice, &c.

True copy. Test :

J. R. Young, Clerk, &c.

53 By M. A. Clancy, Asst. Clerk.

[Filed December 31, 1891. J. R. Young, Clerk.]

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphan's Court Business, Letters of Administration on the personal estate of MARY STEPHENSON, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 26th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of December, 1891.

JAMES A. WATSON,

53 Randall Hagner, Proctor. Anacostia, D. C.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

In the matter of the Petition)

of John M. Lackey for } No. 13,634. Equity.

change of name.

On motion of said petitioner, by Edwards & Barnard, his solicitors, it is this 31st day of December, 1891, ordered: that the petition herein be heard and considered on Monday, February 1st, 1892.

Provided a copy of this order be published in the Washington Law Reporter for three consecutive weeks before said day.

The petition herein states, that said petitioner is thirty years of age; that for five years last past he has resided in said District; that his name is frequently confounded with "Lockey," "Leckey," and "Laskey," to his inconvenience; and that he believes the name of "Lacey" is evolved from "Lackey;" and he prays that he may be allowed to change his surname by omitting the "K" therin.

W. S. COX, Justice.

A True copy. Test :

J. R. Young, Clerk, &c.

53 By M. A. Clancy, Asst. Clerk.

THIRD INSERTION.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Martha Ann Keefe }
vs. {

Blanche Theresa Keefe.

Equity, No. 12,806.

Dec. 31.

Fillmore Beall, trustee in the above entitled cause, having reported the sale by him of lot numbered twenty-six (26) in square north of square No. 743 to Beale E. Padgett at and for the sum of fifteen hundred (\$1,500) dollars cash: It is, this 18th day of Decem' er, A. D. 1891, ordered that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 19th day of January A. D. 1892.

Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said last mentioned day.

A. B. HAGNER, Justice.

A true copy. Test :

J. R. Young, Clerk.

52-4 By M. A. Clancy, Asst. Clerk.

[Filed December 18, 1891. J. R. Young, Clerk.]

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of LETITIA ALLEN, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of December, 1891.

EDWIN HARRIS,
52 R. Ross Perry, Proctor. 1113 Pa. Ave., N. W.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 18th day of December, 1891.

Mary L. Robeson v. { No. 13,315. Eq. Docket 32.
Effie H. Kline et al.

On motion of the plaintiff, by Messrs. Gordon & Gordon, her solicitors, it is ordered that the defendants, EFFIE H. KLINE and JULIA M. STOUT, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to compel conveyance in fee by the defendant, Effie H. Kline, of an undivided eighth interest in certain land in the District of Columbia, known as "Plain Dealing" and "Mount Pleasant," and also to determine whether said interest is liable for the payment of any part of a debt secured on said land.

By the Court. A. B. HAGNER, Justice, &c.

True copy. Test: J. R. Young, Clerk, &c.
52 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

December 19th, 1891.

In the matter of the Estate of GEORGE W. GIST, late of Washington, D. C., deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Mary S. Gist and Ivory G. Kimball.

All persons interested are hereby notified to appear in this Court on Friday, the 22d day of January next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER and Evening Star, previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: L. P. WRIGHT,
52 Register of Wills for the District of Columbia.
No. 4681. Ad. D. 17. J. J. Darlington, Proctor.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of GERTRUEDE MAY FRY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of December, 1891.

HENRY D. FRY,
52 H. Bradley Davidson, Proctor. No. 1133 14th st.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of ANNA WARM-KESSEL, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 14th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of December, 1891.

PETER H. GORLEN,
52 E. L. Schmidt, Proctor. Brookland, D. C.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**
Holding a Special Term for Orphans' Court Business.

December 18, 1891.

In the matter of the Estate of Jennie E. Giles, late of Washington, D. C., deceased.

Application for Letters of Administration on the Estate of the said deceased, has this day been made by Richard W. Barker, a creditor.

All persons interested are hereby notified to appear in this Court on Friday, the 22nd day of January next, at 1 o'clock P. M., to show cause why Letters of Administration on the Estate of the said deceased should not issue as prayed.

Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter and Washington Post, previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT,
52 Register of Wills for the District of Columbia.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Darwin R. James, Guardian, &c. vs. { Equity, No. 18,508.
Elizabeth Paterson Martin et al.

Samuel R. Bond, the trustee herein, having reported to the court that he has made public sale of lot eight (8) in block thirty-nine (39) of the north grounds of Columbian University to Edward Earll at seventy-one (71) cents per square foot, making \$5,147.50; and lot nine (9) in said block to Jerome Wise, at seventy and a half (70 1/2) cents per square foot, making \$5,111.25. It is this 21st day of December, 1891, by the court, ordered that said sales be ratified and confirmed unless cause to the contrary be shown on or before the 22d day of January, 1892.

Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to said date and in the Evening Star.

A. B. HAGNER.
A true copy. Test: J. R. Young, Clerk, &c.
52 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

December 18th, 1891.

In the matter of the Estate of GIDEON S. PALMER, late of Washington, D. C., deceased.

Application for the Probate of the last Will and Testament of the said Gideon S. Palmer, bearing date the 8th day of June, 1887, and for Letters Testamentary on the Estate of the said deceased, has this day been made by Susan L. Palmer, the sole executrix named therein.

All persons interested are hereby notified to appear in this Court on Friday, the 22nd day of January, 1892, next, at 1 o'clock P. M., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and the Washington Post previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT,
52 Register of Wills for the District of Columbia.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
George E. Miller vs. { Equity, 13,166. Doc. 82.
Thomas E. Hume's Admirs.

The trustees herein, Edward A. Newman and J. Holdsworth Gordon, having reported the sale of the real estate in the proceedings described, at and for the sum of \$1,400: It is this 15th day of December, A. D. 1891, adjudged, ordered and decreed that the sale reported be and the same hereby is, ratified and confirmed, unless cause to the contrary be shown on or before the 15th day of January, 1892.

Provided a copy of this order be published once a week for three weeks, in the Washington Law Reporter and Evening Star prior to said day.

A. B. HAGNER, Justice.
A true copy. Test: J. R. Young, Clerk.
52 By L. P. Williams, Asst. Clerk.
[Filed December 15, 1891. J. R. Young, Clerk.]

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WASHINGTON, D. C., - - - JANUARY 14, 1892

IN THE case of *Bergh v. Warner*, recently decided by the Supreme Court of Minnesota, an interesting discussion will be found in the opinion of the court as to the extent of the wife's power to bind her husband for purchases made by her of tradesmen. The action was brought to recover of the husband the price of a pair of diamond earrings purchased by the wife for her own use. The court in delivering judgment held that where a person sells goods to a wife, he can only hold the husband liable for them either by proof that he expressly or impliedly authorized the purchase, or by proof that he refused or neglected to provide a suitable support for the wife, and that the goods sold were necessaries. The authority of the wife as the husband's agent to purchase goods on his credit may, however, be either express or implied from acts and conduct, as in other cases of agency; and where the goods purchased are such as in the ordinary arrangement of the husband's household, are required for family use, the presumption is that the wife, if living with her husband, had authority from him to make the purchase. The term "necessaries" in its legal sense, as applied to a wife, is not, said the court, confined to articles of food and clothing required to preserve life or personal decency, but includes such articles of utility or ornament as are suitable to maintain her according to the estate and rank of the husband. Disposing of the particular purchase in question the court says:

By having, without objection, permitted his wife to contract other bills of a similar nature on his credit, or by payment of such bills previously incurred, and thus impliedly recognizing her authority to contract them, a husband may have clothed his wife with an ostensible agency and apparent authority to contract the bill sued on, so as to render him liable, although she had no actual authority, just as any principal would be liable under like circumstances. It is also true that where the wife is living with her husband, she as the head and manager of his household is presumed to have authority from him to order on his credit such goods or services as, in the ordinary arrangement of her husband's household, are required for family use. *Flynn v. Messenger*, 28 Minn., 208, 9 N. W. Rep., 759; *Wagner v. Nagel*, 33 Minn., 348, 23 N. W. Rep., 308. This presumption is founded upon the well known fact that, in modern society, almost universally, the wife, as the manager of the household, is clothed with authority thus to pledge her husband's credit for articles of ordinary household use. But the articles sued for here are not of that character, and no such presumption would arise from the mere fact that the parties were living together as husband and wife. To hold the husband liable there must have been some affirmative proof of authority from him, either express or implied, from his acts and conduct. In this case there is an entire absence of any evidence of express authority. Indeed, the evidence tends quite strongly to show that it was his expressed wish that his wife would incur no bills, and that his monthly allowance to her of "pin-money" was intended to avoid any occasion for her doing so. The evidence of acts and conduct on part of defendant tending to show that he had clothed his wife with apparent or ostensible authority to buy any such articles on his credit was exceedingly slight. The mere fact that he furnished his wife with expensive wearing apparel had little, if any, tendency to prove any such fact.

STOCKHOLDERS in The Law Reporter Company of Washington City will take notice that an election for the purpose of choosing nine trustees will be held at the office of the Company, 503 E St., N. W., on Monday, February 8, 1892; polls to be open from 1 to 3 o'clock p. m.

B. F. LEIGHTON, Secretary.

EQUITY.—The principle that he who comes into equity must come with clean hands does not apply to misconduct of complainant in nowise affecting the equitable relations between the parties, and not arising out of the transaction as to which relief is sought. *Foster v. Winchester*, 9 So. Rep., 83 (Ala.).

Supreme Court of the District of Columbia.**IN GENERAL TERM.****DANZIG & POTOSKY, TRADING AS THE****AMERICAN CLOAK & SUIT****COMPANY****v.****ISADORE SAKS, GARNISHEE.**

1. Where a preference in a deed of assignment for the benefit of creditors is made under a mistake as to the legal right of the party preferred to claim as a creditor, the assignment, if not otherwise fraudulent, is not thereby rendered void, but the mistake must be corrected.
2. Where in the judgment of the court a verdict, if found for the plaintiff, should be set aside, the court is justified in withdrawing the case from the jury.
3. Where the financial condition of a firm is such that an assignment for the benefit of creditors should be made, and is accordingly made, the fact that immediately before the assignment, the members of the firm drew out a large amount of cash which they appropriated to their individual uses, does not render the assignment void if it be in all other respects honestly made.

At Law. No. 28,345. Decided October 19, 1891.
The Chief Justice and Justices COX and JAMES sitting.

MOTION for a new trial on a bill of exceptions.
Judgment affirmed.

THE FACTS are stated in the opinion.

Messrs. C. C. COLE and LEON TOBRINER for plaintiffs.

Messrs. EDWARDS & BARNARD for defendants.

Messrs. WORTHINGTON & HEALD for the preferred creditors.

Chief Justice BINGHAM delivered the opinion of the Court:

The plaintiffs sued Mayer & Rohr, retail merchants in Washington, on an account and recovered judgment. They then issued an attachment, and had it served on the defendant, as garnishee, with three interrogatories, the first two being questions usually asked garnissees, namely, whether the party served had property, moneys, or credits of defendants, or knew of any such, and the third being a special question, asking him what moneys, if any, he held under a certain deed of assignment from the judgment defendants, dated December 27, 1887, which plaintiffs claimed was fraudulent and void. The garnishee answered the first two interrogatories in the negative, and the third by stating he still held some \$6,300 as trustee under the said deed.

The plaintiffs joined issue on the answer to the first and second questions, but admitted the answer to the third.

On the trial of these issues in the Circuit Court, after the evidence of the parties had

been submitted to the jury, the justice presiding held as matter of law, that there was not sufficient evidence to authorize the case to be submitted to the jury and directed a verdict for the defendant.

The evidence is set out in the bill of exceptions. Counsel for plaintiff maintained that there was sufficient evidence of fraud to justify a verdict for the plaintiff, or at least to require the submission of the case to the jury, and secondly, that it was unnecessary that the plaintiff should prove that the assignee had any knowledge whatever of any fraudulent purpose on the part of the assignor. The discussion of counsel chiefly relates to the second proposition as one of law, whether or not it is necessary in cases of this character that the assignee should have a knowledge of the fraudulent purpose and intent of the assignee before a recovery can be had by the plaintiff who sues to set aside the assignment for fraud, and to convert the proceeds of the estate to the payment of his particular debt.

We think that the decision of the second proposition is unnecessary, because clearly if the proof is not sufficient to justify a verdict for the plaintiff on account of fraud on the part of the assignor, or in other words, if the plaintiff has failed to prove a fraud to have been committed by the assignor in making the assignment, by such evidence as would justify a verdict, then there was no error in the action of the Circuit Court in taking the case from the jury, and in the view which we take of this case, it is readily disposed of upon that ground.

In this assignment a preference is given for the sum of \$2,500 to one Rose, who was the father-in-law of Rohr, one of the parties, and who it is claimed was not the creditor of the firm, but was the mere surety of Rohr to a party in the city of New York, from whom Rohr at the time of the formation of this partnership, in February, 1885, borrowed the sum of \$10,000, and that while the firm had executed a note to Rose to indemnify him for having become the surety of Rohr for the sum of \$10,000; that this in no manner constituted Rose the creditor of the firm; that so far as he had any relation to either of the parties, either Rohr or the firm, he clearly was the creditor not of the firm, but of Rohr, and only entitled to the rights of a creditor of the latter by reason of his being surety for him to the party from whom Rohr had borrowed the money.

It is admitted by counsel for the plaintiff that even conceding that Rohr and not the firm was the debtor, and that the firm had no right

whatever to prefer Rose because of the fact that he was the creditor of Rohr and not of the firm, yet, that does not constitute a case where fraud would be inferred ; that it does not alone and by itself make the assignment fraudulent.

It is worthy of remark that from the evidence it can hardly be inferred that there was any actual fraudulent intent on the part of either partner in making the preference to Rose. It would seem at most to be only a mistake as to legal right which, if so, would not be a ground for impeaching the assignment in this action, but would be corrected in a proper case.

And so in relation to the circumstance that these parties, very shortly prior to the execution of the deed of assignment, took out of the firm quite a sum of money and appropriated it to their own use. It is conceded by counsel for plaintiff that this is not such a fraud as would make the deed of assignment for that reason fraudulent, but it is claimed to be a circumstance which the jury should have been allowed to look at for the purpose of inferring fraud in connection with other circumstances connected with this assignment.

We think the position of counsel for the plaintiff as to these propositions may be conceded, that this was evidence and could not when it was offered properly be ruled out as irrelevant or immaterial ; that these circumstances were not to be considered separately, but were to be viewed in connection with all the testimony in the case ; and upon that sort of consideration the court was to determine whether or not there was sufficient evidence before the jury to justify a verdict. If in the judgment of the court, if the jury should for any reason find for the plaintiff, it would become the duty of the court to set aside that verdict on a motion for a new trial, the court would be perfectly justified in withdrawing the case from the jury.

Without examining the evidence in detail we will refer to it somewhat generally. This partnership was formed in February, 1885. At that time money was borrowed by each of the partners through the aid of their relatives respectively. It appears, so far as we know that the business was conducted regularly until the 1st of July, 1887, when an account of stock was taken, and it is shown that the stock had become reduced from \$20,000 to \$12,000, and that there was then an indebtedness of the firm shown of an amount more than equal to the capital stock.

It is also shown that for three or four months prior to making the assignment on the 24th of December, 1887, the firm made large purchases

of goods, and this, it is claimed is a circumstance which the jury were entitled to consider for the purpose of inferring fraud.

Now, in looking at the other evidence in the case, which we must not lose sight of in determining the question whether or not the court erred in reaching its conclusion, we find this is a circumstance (which is clearly competent when the real question is, as in this case, whether the debtor purchased the goods creating the debt upon which the plaintiff's judgment was rendered with the intention not to pay for them but to appropriate them or the proceeds thereof, or through the instrumentality of an assignment to the payment of the claims of more favored antecedent creditors) to wit, that there is no evidence that Mayer & Rohr ever contemplated an assignment up to about the latter part of the month of November, and then they consulted a prominent business man, Mr. Saks, who ultimately became the assignee, and he advised them to consult their counsel. They did so. They consulted the firm of Edwards & Barnard, according to the undisputed evidence, laying before them all the facts of the entire situation as it was at that time. It is shown by the testimony of not only Mayer & Rohr but by that of Saks, Evans and Edwards, that at that time Mr. Edwards advised the firm not to make an assignment ; that there situation was not such as demanded of them to do so ; that there was a strong probability that they might be able to weather the storm, and avoid an assignment.

Thereupon they proceeded with their business. A short time after this they became aware that they were in further trouble. Some of their creditors were threatening attachments ; and they again consulted Mr. Edwards, who upon full investigation a second time, advised them that it was then proper to make an assignment. The assignment was executed on the day following this consultation.

It appears that perhaps on the very morning before they executed the assignment, they withdrew quite an amount of money from the firm, one of them some \$3,000, and one a little less than \$1,000. Now, that the withdrawing of the money at this time was a fraudulent transaction on the part of the firm, there can be no doubt ; that the creditors would be entitled to resort to legal remedies for the purpose of bringing this money back into the hands of the assignee to be administered as a part of their assets, there can be no doubt. But that it does necessarily prove that the assignment itself is fraudulent, we think does not follow. It is a

fraud on the assignment, but not a fraud in the assignment, as was very well remarked by one of the counsel in argument.

We think that the *assignment* must be fraudulent and that the fact of withdrawing this money does not make it an assignment which could be held to be fraudulent as matter of law; nor is it a fact which necessarily tends to prove that the assignment is fraudulent.

It was done in accordance with the advice of reputable counsel, and under the facts and circumstances of the situation beyond all question they should have made an assignment at that time. If they did not do that to the full extent that honesty and good faith and the law would require of them, nevertheless, to the extent to which they did follow the law and give up for the use of their creditors their assets, they were doing an honest and proper thing.

Upon this point we refer to a few authorities which with many others sustain this position. *Emerson v. Senter*, 118 U. S., 1; *Estes v. Gunter*, 122 U. S., 450; *Burrill on Assignments*, Sec. 117; *Pinneo v. Hart*, 37 Mo., 561; *Mcintosh v. Corner*, 33 Md., 607; *Henderson v. Pierce*, 108 Ind., 462.

It may be that the circumstances to which we have alluded as having been such as the counsel for plaintiff, in argument claimed, indicated fraud and were proper matters to be left to the jury for their verdict might altogether raise such a presumption of fraud as in the absence of explanation or opposing testimony would justify the jury in finding a verdict for the plaintiff, but when considered in connection with all the circumstances in the case, as shown by all the evidence, they are not of such significance and weight as would justify a jury in finding a verdict for the plaintiff, and we think there was no error on the part of the Circuit Court in withdrawing the evidence from the jury and directing a verdict for the defendant.

The judgment of the Circuit Court is affirmed.

Legal Detriment in Contracts.

The Court of Appeals of New York has lately rendered a decision in the case of *Hamer v. Sidway*, 124 N. Y., 538, reversing a decision of the Supreme Court. The facts of this case briefly were that the defendant's testator offered to the plaintiff the sum of five thousand dollars, if he would refrain from smoking and drinking liquor until he became of age. The

plaintiff performed the condition, and, after asking for the money, brought this action. The Supreme Court decided in favor of the defendant, on the ground that the plaintiff had incurred no detriment, it being no disadvantage to refrain from habits which "are not only expensive but unnecessary and evil in their tendency." When the decision was reported, the *Review*, Vol. 4, page 237, pointed out that the court had misunderstood the meaning of the term "legal detriment." We contended that the term meant the giving up of a legal right, and that the plaintiff had done this. The judgment of the Court of Appeals is based on this definition. Parker, J., speaking of the defendant's contention that the plaintiff incurred no detriment, as what he did was really beneficial to him, said: "Such a rule could not be tolerated, and is without foundation in the law.

* * * In general, the waiver of any legal right at the request of another party is a sufficient consideration for a promise." It is satisfactory to notice that the attempt to narrow the meaning of the term "detriment" has been so decidedly overruled.—*Harvard Law Review*.

First Offenses.

The London Times thus comments on an important change just introduced into the French Criminal Administration: "By a law promulgated on March 27, a great distinction is to be made between first and subsequent offenses. The man who is brought up for the first time and found guilty will be sentenced to fine or imprisonment as the nature of his offense demands, but the sentence will not necessarily take effect. The execution of it may be postponed, if the court so determines; and if the offender keeps a clear record for the next five years he will be suffered to escape unpunished. But if during his period of probation he falls again into crime and comes again before the court, his old sentence will be revived, and he will undergo a twofold punishment for his old and for his new offense. Good results are expected to follow from the change, and it may be hoped with reason that they will follow. The distinction in treatment is based upon a distinction which exists in fact. A first offense does not necessarily prove that the offender belongs to what is known as the criminal class. He may have been betrayed into crime under the pressure of special circumstances, or may have given way to sudden temptation by no deliberate choice of his own. To send such a man to jail may have

just the effect which a wise legislature would be most careful to guard against. It may introduce him to a life of crime by the stigma which it puts upon him as a jail-bird, and by thus making it very difficult for him to earn an honest livelihood at any time afterward. The new law will work in a direction exactly the opposite. The man who has been let off unpunished, but not unsentenced, will have the strongest possible inducement to keep straight for the future. He will have received a grave warning, and he will know that it will depend upon himself whether the consequences are to end with this. If he has become a criminal, so to say, by accident, the probability is that he will stop short at the first offense. If he is a true criminal—a criminal by set purpose, a man whose instincts or training lead him to prefer a life of crime, with its shifts and dangers and escapes, to the obligation of steady work—it is pretty certain that he will make a bad use of the chance allowed him, and that he will suffer accordingly as he deserves. Under the present French system, these two very different orders of men are as likely as not to have the same treatment, and it does not tend to reform either of them. The new law gives them both a chance and an inducement to turn over a new leaf; and if only one of them takes advantage of it, the fault henceforth will be with the man, and not with the law.

The treatment of criminals in this country has been a subject in which sentiment has played much too large a part. In this, as in other matters, public opinion is apt to oscillate between opposite extremes and the law follows opinion, at a distance no doubt, but in the direction of the same end. The old law, before Bentham and Romilly, was brutally and unjustifiably severe. Death was the punishment of some scores of offenses, many of them of the most trumpery kind. This method did not succeed in putting down crime. Candidates for the gallows were as numerous as ever, and as Monday morning came round fresh batches of them were turned off. Since that time we have swung round to the opposite extreme, and we have come to allow to habitual crime a practical immunity to which it has no claim of right. The man who comes up again and again for the same offense, and who is no sooner out of prison than he sets to work at once to qualify himself for a new sentence, is suffered to escape on each occasion very much more easily than he deserves. In the cant of the day he has another chance given him, and he uses it exactly as we might expect. In the opinion of some,

even of our judges, this is as it should be. An offense, they hold, is blotted out when the appointed punishment has been suffered for it, and it is not to be remembered to the disadvantage of the criminal when he next comes before the court. This is a doctrine to which the whole criminal class would most readily subscribe. It is in their interest that it has been promulgated; since it enables them to live exactly the life which they prefer, with no more than what they accept as the fair risks of their calling. It is well, however, that our dislike of severity has not stopped here. It has found more worthy objects than the irreclaimable scoundrels who offend as often as they have the chance. We have learned, as the French are learning, that first offenses may often be lightly visited with no danger to society, and it has been left to the discretion of the court to deal with some of them as the case may be thought to warrant. The fact is that a first offense, even when it has been punished by imprisonment, is ordinarily a last offense. The number of those who are reconvicted does not form a large percentage of the whole. The question suggests itself whether the imprisonment has not been wasted, and whether under the new French system the same result may not be attained more certainly and without the suffering and degradation which imprisonment causes and leaves after it. The experiment is well worth trying, and it is not considered to have failed, as far as it has been tried as yet. It may be extended with advantage to the old as well as to the young. The man who has passed many years of his life without having fallen into crime, and who offends at last, is not likely to be a member of the real criminal class, and he may at least claim the benefit of the doubt. If he can be let off safely, it will be a gain to society and to himself. In due time he will reveal himself for what he is; and if he makes a bad use of his chance, he ought not to be suffered to escape a second time under the plea of first fault.

Under the new French law, or in any law of the kind, there must necessarily be a very large discretion vested in the court. There are forms of crime to which no leniency can be shown, which carry with them their own evidence of a depravity beyond cure. But in a majority of instances, account ought to be taken of the prisoner's antecedents and of the circumstances under which he has lapsed into guilt. The object of punishment has been very variously stated. If it is to the reform of the criminal that we ought especially to look, the new

French law may be thought to have the best prospect of attaining the desired end. If the aim is the safety of society, a system which tends, as we have shown, to reduce the number of criminals, gives no bad security for this. But however leniently the law may deal with a first, or even sometimes with a second, offense, it is mere folly and weakness to show leniency to habitual and systematic crime. The criminal profession is not without charms of its own. Its long predatory war against society has the excitement of the hunter's life, attended by a spice of danger which makes it hardly the less attractive to its true votaries and devotees. Those who have taken it up in earnest are as unfit subjects for leniency as they are hopeless subjects for reform. To catch them and presently let them loose again is only to give them new opportunities for mischief. Such punishment may deter others, but it will not deter them. Their case is beyond cure, and it must be dealt with on a more drastic plan. Only while they are in prison are they harmless; so that society has no choice except to protect itself by keeping them there, or to put up with the certain consequences of allowing them to go at large." The working of this law will be watched with interest.—*Green Bag.*

Supreme Court of Pennsylvania.

STODDART v. PRICE.

BAILMENT—EXECUTION AGAINST BAILEE—CONSTRUCTION OF VERBAL AGREEMENT.

1. When the evidence is such as to justify a finding by the jury that the property in question was originally loaned by the owner to W., with the understanding that it might be taken back at any time, and further that whenever W. paid what the goods had cost the owner they should be transferred to him, it is error for the trial judge to instruct the jury that the transaction was a conditional sale, and made the goods liable to execution for the debt of W.
2. The agreement being oral, it was the exclusive province of the jury to inquire and ascertain what the parties meant.

Decided October 5, 1891.

APPEAL from the judgment of Court of Common Pleas of Luzerne County.

Mr. Justice STERRETT delivered the opinion of the Court:

As claimant of the property in controversy, it was incumbent on the plaintiff to prove that he was the owner thereof when it was levied on at the suit of defendant against Aaron

Whitaker. For that purpose evidence was introduced to show that in 1879 the greater part of the property in question was taken in execution and sold by the sheriff to Isaac Livingston, who thereupon transferred the same to plaintiff, in whom the title thereby became absolutely vested. In affirming his first point, without any qualification, the court, in effect, said:

"The record and documentary evidence in the case shows that on April 8, 1879, Isaac Livingston became the owner of certain personal property, consisting of furniture, etc., in the Exchange Hotel, by virtue of a sheriff's sale to him on an execution against Aaron Whitaker, the occupant and keeper of said hotel, and property which he afterwards sold to William Stoddart, the plaintiff, whereby (there being no evidence to the contrary) said Stoddart became the bona fide owner of said personal property."

It was further shown, by the testimony of Whitaker and the plaintiff himself, that under a verbal agreement between them, the property was allowed to remain in Whitaker's possession for the purpose of enabling him to continue the business of hotel keeping, and thus support himself and family, etc. As to the terms of that agreement, there was no material conflict of testimony.

The defendant offered no evidence; but, resting his defence solely on the testimony of Whitaker and the plaintiff, he contended that the agreement to which they respectively testified, was, in effect, a conditional sale of the property to Whitaker, and he therefore requested the court to charge, "that under all the evidence in the case the verdict of the jury must be for the defendant." The learned judge of the Common Pleas, concurring in that view, refused to affirm plaintiff's second, third, and fourth points, and directed a verdict for defendant. That action of the court is the subject of complaint in several specifications of error.

The plaintiff's contention was that the transaction between himself and Whitaker was a bailment, and not a conditional sale; that, by its terms, no such ownership or interest in the property was vested in Whitaker as subjected the same to levy and sale on an execution against him. His points for charge above referred to were predicated of that view of the testimony and construction of the verbal agreement under which plaintiff permitted his property to remain in Whitaker's possession, to be used in conducting his business, etc. In the second point, the court was requested to charge

that "a loan of personal property, subject to be turned into a sale by compliance with certain conditions, does not vest in the bailee such an ownership as subjects the property to levy and sale upon an execution for his debts."

Without affirming or denying the correctness of this legal proposition, the learned judge refused the point solely because, in his opinion, it was not "applicable to the case." He had already ruled that the transaction was a conditional sale and not a bailment.

After referring in his third point to the uncontradicted evidence, that all the property described in defendant's levy, etc., except a couple of articles, is the same that Isaac Livingston purchased at the sheriff's sale, and afterwards transferred to him, the plaintiff requested the court to charge, "If the jury believe this evidence, and that Stoddart loaned this property to Whitaker, with the understanding that he (Stoddart) might take it away at any time, and with the further understanding that whenever Whitaker paid him what the property cost him, he would transfer it to him, such arrangement did not vest in Whitaker an ownership that would subject the property to levy and sale on an execution for his debt; and if Whitaker's possession has been retained with this understanding, the jury should find, as to this property, in favor of the plaintiff."

This point appears to be in full accord with the testimony, and was clearly warranted thereby; and this is especially true as to the substance of the arrangement under which the property was permitted to remain in Whitaker's possession. The testimony on that subject was clearly for the consideration of the jury, and if it had been submitted to them under proper instructions, it is difficult to understand how they could have reached any other conclusion than that the material facts were as stated in that part of the point last above quoted. But, instead of submitting any question of fact to the jury, the learned judge held, that the transaction referred to was a conditional sale, and accordingly directed the jury to find for defendant. In that we think there was error.

For same reason, there was also error in refusing plaintiff's second point, and in charging as recited in the fourth to seventh specifications, inclusive. The testimony of Whitaker, and that of the plaintiff himself, tended to prove the facts of which the fourth point is predicated, and there was no direct evidence to the contrary. It follows that the point should have been affirmed and the jury permitted to pass upon the questions thus presented.

It is not our purpose to review the evidence to which reference has been made. It is enough to know that if the jury had been permitted to consider it, they would have been warranted in finding, as already suggested, that the property was not sold to Whitaker, but merely loaned to him, for the purpose above stated, with the understanding that plaintiff might take it away at any time; and with the further understanding that whenever Whitaker paid him what the property cost him, it would be transferred to him; and further, that the property never was so paid for, but merely remained in Whitaker's possession, with the understanding that possession thereof might be resumed by plaintiff at any time. Speaking of the arrangement, plaintiff testified: "If I got dissatisfied with the thing of course I was to take possession of it and dispose of it at any time it suited me." Speaking of the terms on which plaintiff permitted the property to remain in his possession, Whitaker testified: "He let me have the furniture there as a matter of course, and if I could pay him back, why he was to sell me back the furniture, or to do what he pleased with it. It was his furniture. It is his furniture to-day. I do not own a dollar of it." Again, in answer to the question, whether he had ever made enough out of the business to pay plaintiff anything that he ever put into the hotel, he said, "No, sir; I never made enough, and up to last January I am \$1,100 out besides."

The agreement of parties was oral; and, as was said in *Maynes v. Atwater*, 89 Pa., 497, "The sense of words used in connection with what the parties intended to express by them is exclusively for the jury to determine;" or, as the principle is stated in *Forrest v. Nelson*, 108 Pa., 497, "If the contract is verbal, it is, of course, the exclusive province of the jury to inquire and ascertain what the parties meant; if it is in writing, its construction is for the court."

Assuming that the jury might have found the facts as claimed by the plaintiff and strongly indicated by the evidence, the transaction was a bailment, similar in principle to that in *Maynes v. Atwater, supra*.

In that case it was ruled that retention of possession by a former owner of personal property sold at sheriff's sale, is not a badge of fraud, nor does leaving the property with the former owner warrant the inference that the purchaser either sold or gave it to him as to authorize its seizure again as the debtor's property.

It follows from what has been said that the judgment cannot be sustained.

*Judgment reversed and a *venire de novo* awarded.*

Supreme Court of Ohio.

PENNSYLVANIA COMPANY

v..

JACOB LANGENDORF.

1. It is not negligence per se for one to voluntarily risk his own safety or life in attempting to rescue another from impending danger. The question whether one so acting should be charged with contributory negligence in an action brought by him to recover damages for injuries received in attempting the rescue, is one of mixed law and fact, and should be submitted to the jury upon the evidence, with proper instructions from the court.
2. While one who rashly and unnecessarily exposes himself to danger cannot recover damages for injuries thus brought on himself, yet, where another is in great and imminent danger, one who attempts a rescue may be warranted by surrounding circumstances in exposing his limbs or life to a very high degree of danger, and in such cases he should not be charged with the consequences of errors of judgment resulting from the excitement and confusion of the moment.
3. In such cases, if the rescuer does not rashly and unnecessarily expose himself to danger, and is injured, the injury should be attributed to the party that negligently or wrongfully exposed to danger the person who required assistance.

Decided May 5, 1881.

ERROR to the Circuit Court for Lucas County to review a judgment affirming a judgment of the Court of Common Pleas in favor of plaintiff in an action brought to recover damages for personal injuries alleged to have resulted from defendant's negligence. *Affirmed.*

STATEMENT.

The defendant in error recovered a judgment against the plaintiff in error in the Court of Common Pleas of Lucas County for damages resulting from an injury received by him while rescuing a child of tender years, who had fallen in front of an advancing freight train of the plaintiff in error. This judgment was affirmed by the Circuit Court, and thereupon these proceedings were brought to obtain a reversal of the judgments of both courts.

Any further statement of facts necessary to understand the questions decided will be found in the opinion.

Mr. Justice BRADBURY delivered the opinion of the Court :

The defendant in error, in June, 1880, while passing along one of the streets in East Toledo, stopped at a point where the track of the railway of plaintiff in error crossed the street, and engaged in conversation with a woman who had in charge two children, one an infant in arms, the other a girl about four years old. The plaintiff in error had constructed a safety gate at this point, and during the greater part

of the day kept there a watchman to close the same when trains were approaching, as a warning to travelers. The accident that caused the injury occurred about 7 o'clock in the evening, or a little later, but while it was yet light. The watchman had finished his day's labor, and gone away, and the gate was raised (or open), though the street was, perhaps, as extensively used at that hour as at any other part of the day. A local freight train was past due, and approaching at a higher rate of speed than that prescribed by the ordinances of the city. The defendant in error and the nurse were engaged in conversation at a point from which the approaching train was in view for a considerable distance, though exactly how far away it could be seen is left in some doubt. The little girl, while her nurse and defendant in error were conversing, wandered across the railroad track, and seeing or hearing the approaching train, became excited by the sight or noise or both, and by clapping her hands and other manifestations of surprise and delight attracted the attention of her nurse certainly, and probably that of the defendant in error also. The nurse excitedly called the child to her, and while crossing the railroad track in obedience to the call it tripped and fell in front of the rapidly approaching train, whereupon the defendant in error, observing its imminent peril, sprang to its rescue, caught it in his arms and leaped onward, but was struck by the locomotive before he could pass beyond its reach, and received the injuries of which he complains. That the safety gate was raised and the watchman absent, was not disputed at the trial, so far as the record discloses; and the evidence is amply sufficient to warrant the jury in finding that the train was being run at an unlawful rate of speed, so that in both these particulars the negligence of the railroad company was established. It is contended, however, that the negligence of the railroad company should have related to the party injured and that the jury, in passing upon the case of the defendant in error, should not have taken into consideration the rights of the rescued child, but should have confined itself to considering the relations existing between him and the railroad company; and in this connection the plaintiff in error requested the Court of Common Pleas to charge the jury as follows :

"The plaintiff's right to recover depends entirely upon the fact that the defendant was guilty of negligence in its relations to this plaintiff. The jury, in deliberating upon your verdict, must not consider the rights of the child. This

action has nothing do with her rights. The sole questions here are: Was the defendant guilty of negligence which caused the plaintiff's injuries? And was the plaintiff himself guilty of contributory negligence?" This request was properly refused. Negligence does not usually relate to any one in particular and does not in any case so relate unless there is some special duty owing to the individual affected by the negligent act or omission. In the case under review the railroad company owed no special duty to either the rescuer or the rescued that it would not have owed to any individuals similarly situated. The obligation was to the public generally; and any person who, without fault on his part, received an injury in consequence of its failure to discharge this obligation, may recover from it compensation therefor. No other relation is necessary where the obligation is to the public, than that the one by its negligence has caused injury to the other without the latter's fault.

It is also objectionable to another particular—that of requiring the jury to ignore the rights of the child. It is true that the child in its relations to the Railroad Company might have a right of action for injuries received by it, and yet no right accrue to the defendant in error for those received by him in the same accident. The circumstance that the child had a right of action could not be conclusive that the defendant in error had one also, though the same blow of the locomotive injured both, for the negligence of the latter might contribute to the result in a manner to defeat his recovery, while no negligence could be imputed to the child. If it was the object of this request to impress upon the minds of the jury the proposition above stated, that the rights of action of the child and its rescuer against the railroad company were distinct, the language selected was not well chosen. The phrase: "The jury, in deliberating on your verdict, must not consider the rights of the child. This action has nothing to do with her rights,"—was well adapted to mislead the jury into the belief that the imminent danger of the child, and its right to be rescued therefrom, were to be excluded from their consideration. This view would have defeated the recovery, for the very ground upon which the defendant in error founded his claim was that the imminent peril of the child warranted the risk he assumed in undertaking its rescue.

This brings us to the consideration of the main question. Plaintiff in error contends that it was negligence *per se* for the defendant in

error to throw himself in front of a moving train in his effort to rescue the child from danger. The petition of the plaintiff below discloses that he received the injury of which he complained by voluntarily passing in front of a moving train to rescue a child who had fallen in front of it; therefore, if such an act is negligence *per se*, the petition disclosed that the negligence of the plaintiff below contributed to the injury, and he was not entitled to maintain an action therefor. The same question was raised by an exception taken to the following part of the charge of the court: "It appears that the plaintiff was struck by the engine and injured while in the act of passing across the track and rescuing a little child from danger and saving its life. To hold the railroad company responsible in damages for this injury it must be shown, that the child was in danger of being run over and injured by the approaching engine, and that such danger was caused or created by the negligence of the railroad company, and, that in making the effort to rescue the child the plaintiff was not guilty of contributory negligence. These are questions of fact which it will be your duty to determine from the evidence. * * * If you find that the peril to which the child was exposed was caused by such negligence of the company, you will then inquire whether the plaintiff, in passing across the track and attempting to rescue the child, was guilty of contributory negligence. The law will not impute negligence to an effort to preserve human life, unless made under such circumstances as to constitute rashness in the judgment of prudent persons. * * * If he believed, and had good reason to believe, that he could save the life of the child, without serious injury to himself, the law will not impute to him blame for making the effort." Plaintiff in error insists that the court of common pleas, instead of leaving the question, as it did, to the jury, to say whether the act of the defendant in error, under all the circumstances, and according to the rules laid down by the court, was or was not negligent, should have told them that to pass in front of a rapidly moving train, as it was admitted the defendant in error did, even to rescue from danger a child of tender years, was in law an act of negligence that defeated his right of recovery. It is said that the defendant in error voluntarily assumed the risk, that the danger attending his act was apparent, and that, however commendable his conduct may have been when viewed from the stand-point of humanity, the law will grant no relief for an injury thu

brought upon himself. It is apparent that the defendant in error was under no legal obligation to rescue the child. If he had chosen to stand by and permit the approaching train to run over and kill the child, he would have violated no rule of law, civil or criminal. Therefore what he did in the matter was a voluntary act in the sense of that term that he was under no legal obligation to perform it. That, however, is not a conclusive test of the question. To entitle one to relief for the consequences of the negligence of another, it is by no means necessary that the party injured should have been at the time in the discharge of any duty whatever. His rights in this respect are perfect when he is in the performance of any lawful act, and even, in some instances and in some States, when the act is in some respects not strictly lawful. The act of the defendant in error was not only lawful, but it was highly commendable; nor was he in any legal sense responsible for the emergency that called for such prompt decision and rapid execution. The negligence of the Railroad Company in having no watchman at this public crossing, and the unlawful rate of speed at which the train was running towards it, to which may, perhaps, be added that of the nurse in charge of the child, were the causes of its extreme danger. There was but the fraction of a minute in which to resolve and act, or action would come too late. Under these circumstances it would be unreasonable to require a deliberate judgment from one in a position to afford relief. To require one so situated to stop and weigh the danger to himself of an attempt to rescue another, and compare it with that overhanging the person to be rescued, would be in effect to deny the right of rescue altogether if the danger was imminent. The attendant circumstances must be regarded; the alarm, the excitement and confusion usually present on such occasions; the uncertainty as to the proper move to be made; the promptness required, and the liability to mistake as to what is best to be done suggest that much latitude of judgment should be allowed to those who are thus forced by the strongest dictates of humanity to decide and act in sudden emergencies. And the doctrine that one who, under those or similar circumstances, springs to the rescue of another thereby encountering even great danger to himself, is guilty of negligence *per se*, is supported by neither principle nor authority.

In *Evansville & C. RR. Co. v. Hiatt*, 17 Ind., 102, language is used by the judge in deciding the case, which, to some extent, supports the

doctrine, but the decision was not placed upon that ground, and what the learned judge said in that connection may be regarded as obiter dictum. The doctrine is repudiated by the text-writers and all the other cases that come to our notice. In *Eckert v. Long Island RR. Co.*, 43 N. Y., 502, it was held that "the law has so high a regard for human life that it will not impute negligence to an effort to preserve it, unless made under circumstances constituting rashness in the judgment of prudent persons." In that case the rescuer lost his life in throwing a small child from the track of an approaching train, and a judgment in favor of his administrator for damages resulting from his death was affirmed by the Court of Appeals. The resemblance between that case and the one before us is very striking. This doctrine has received the sanction of the courts of last resort in Massachusetts and Missouri. *Linnehan v. Sampson*, 128 Mass., 506; *Donahoe v. Wabash, St. L. & P. RR. Co.*, 83 Mo., 560; *Beach, Contrib. Neg.* p 45, Sec. 15; *Wharton, Neg.*, Sec. 314; *Pierce, Railroads*, 329. The doctrine that one is not necessarily chargeable with contributory negligence because he adopted a course of action that imperiled his safety, or even his life finds support in other courts. *Carroll v. Minnesota Valley RR. Co.* 14 Minn., 57; *Pennsylvania Co. v. Roney*, 89 Ind. 453; *Cottrill v. Chicago, M. & St. P. RR. Co.*, 47 Wis., 634. We think the Court of Common Pleas did not err in leaving it to the jury to determine from all the circumstances surrounding the defendant in error at the time he sprang to the rescue whether the act was rash or not, and in saying to them that if they found it was not rash, then it did not constitute contributory negligence. It is difficult, if not impossible, to lay down in advance a rule by which to determine the extent to which one may risk his safety or his life in emergencies of this character and not be charged with rashness; but the emergency may be such as to warrant the assumption of a high degree of risk, and one so situated may rightfully expect his acts to be construed in the light afforded by all the circumstances that impelled him to their commission, and that he would not be charged with contributing to his own injury, so as to defeat a right of action, because the result showed that the risk he assumed was greater than in the excitement of the moment he had contemplated, or in some other respect his judgment had been faulty.

Judgement affirmed.

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Partnership Liability of Stockholders.

The law of corporations is one of the most important with which we have to deal. The liability of stockholders, as partners, is an important subhead of corporation law. As held in the Dartmouth College Case, "A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law." Stockholders of this artificial being, invisible and intangible creature of the law, may be liable in different ways. They may be liable to corporate creditors to the full amount, at par value, of the stock subscribed. They may have an additional liability imposed upon them by statute. This additional liability, beyond the unpaid subscription, may be imposed either by a provision to that effect in the constitution of the State, or by a provision in the charter granted to the corporation; or it may be imposed, as stated above, by statute. The general rule, however, is that the stockholders in a corporation are only liable to the extent and for the par value of the stock held by them; any increased liability must therefore be imposed by the constitution of the State, the charter or statute. The very fact of incorporation limits the liability of stockholders to corporate creditors to the extent of their unpaid subscriptions. When the constitution of a State, or a statute of a State, imposes an additional liability, and those provisions exist at the time when the corporation is formed, there can be no question but that the provisions are constitutional; but when the liability by statute or the constitution of the State is made after the corporation is formed, then the liability thus imposed as a rule of law is unconstitutional and void. As an exception to the general rule, there are some cases in which such provisions would be constitutional and valid. When the legislature has expressly reserved the right to alter or amend the charter of a corporation, a provision by statute or State constitution to alter or amend the charter of a corporation would be constitutional and binding. *Matter of N. Y. Elevated RR. Co.*, 70 N. Y., 327. When the legislature has a reserved power to alter or amend charters of corporations granted by it, it appears by the weight of authority that it may, by statutory enactment, impose upon the stockholders additional liabilities to their liability at common law. When the prescribed method of incorporation has not been followed, a corporate creditor may ignore the existence of the corporation and sue the stockholders as partners. If a corporation is

formed and doing business as such, and has not followed the prescribed method of becoming incorporated, then the supposed stockholders are liable as partners without any regard to the name which they may choose to call themselves. *The National Union Bank v. Londan*, 45 N. Y., 410-414. Thus where the law provides that articles of incorporation shall be filed and recorded in a certain place; and the corporation creates debts before the filing and recording of such articles, then such creditors may have a cause of action against the stockholders as partners. *Bigelow vs. Gregory*, 73 Ill., 197. A total failure of the corporation to file or record its articles of incorporation renders the stockholders liable as partners. In the State of Nebraska the filing of articles of incorporation with the county clerk is a condition imposed by law before a franchise may exist. When such association has failed to comply with the prescribed method, then the members are liable as partners. *Abbott v. Omaha Smelting Co.*, 4 Neb., 416; *Wells v. Gates*, 18 Barb., 554; *Cross v. Jackson*, 5 Hill, 478. When the articles of incorporation fail to name the principal place of transacting business, or name an indefinite place or an indefinite statement as to the place of the principal office of transacting business, when the statute requires it, then the method of incorporation is bad, and the would-be stockholders are liable as partners. Generally the incorporating acts of the States specify what kinds of business may be carried on by the association of persons as a corporation. When it is attempted by individuals to carry on any kind of business as a corporation, not specified in the incorporating acts of the State, the individuals composing the association would be liable as partners. The reason of the above rule is that it is not considered wise public policy to permit a limited liability in certain classes of business. In New York a railroad construction company cannot be incorporated, and therefore the liability of individuals composing such company is that of partners. In Ohio it seems to be the rule that there may be formed a corporation by individuals for the purpose of transacting any business for which individuals may lawfully associate themselves, except for dealing in real estate or carrying on professional business. In the State of Nebraska, "Any number of persons may be associated and incorporated for the transaction of any lawful business, including the construction of canals, railways, bridges and other works of internal improvement." If any corporation in that State fails to comply substantially with

the provisions of the statute in relation to giving notice and other requisites of organization, the property of all the stockholders shall be liable for the corporate debts, and they are therefore liable as partners.—*W. H. Paynter in Central Law Journal.*

RAILROADS.—Plaintiff was lawfully upon defendant's depot grounds, unloading corn into a crib which was near two highway crossings, when defendant's engine passed without signal, and frightened plaintiff's team, causing them to run away and injure plaintiff. The statute provides that no railroad engine shall approach a highway crossing without giving a signal, and makes the neglect to give such signal a misdemeanor: *Held*. That defendant was liable, although plaintiff was not attempting to use such crossing. The instruction of the court below, directing the verdict, seems to be based upon the thought that no one is entitled to protection against the negligence of omitting to ring the bell, except persons who were using or about to use the highway crossing. This would be true only in case the negligence was the omission of an obligation or duty raised by contract, express or implied, or imposed by special regulations of the parties. But the case is one where the negligence causing the injury arises by reason of the violation of a statute which declares the negligence to be a misdemeanor. In support of these views we cite *Wakefield v. Railway Co.*, 37 Vt., 330; *Railway Co. v. Ral-*ford (Ga.), 9 S. E. Rep., 189; *Railroad v. Williams*, 74 Ga., 723; *Railway Co. v. Young* (Ga.), 7 S. E. Rep., 912; *Ranson v. Railway Co.* (Wis.), 22 N. W. Rep., 149. Cases are cited by counsel for the defendant in support of views in conflict with our conclusions. Some are to that effect, but we are clearly of the opinion that they are in conflict with principle. Other cases cited by counsel are not in conflict with our conclusions in this case. *Iowa Sup. Ct.*, Oct. 10, 1891. *Lonergren v. Illinois Central Ry. Co.* Opinion by Beck, C. J.

ADMINISTRATORS.—An administrator recovered a judgment, and, after appeal was barred, waived his advantage and allowed the same to be taken. The appellate court reversed the judgment, and refused a new trial, on the ground that the proof showed no cause of action: *Held*. That he was not obliged to insist on the technicality, and was not personally liable to the estate for the amount of the judgment. *McGuire v. Rogers*, 21 Atl. Rep., 723 (Md.). The reasoning of the court is that an administrator is not obliged to insist upon or set up a legal right when justice does not require it. In accordance with this principle it is generally held that an administrator may waive the Statute of Limitations. The present case is interesting as indicating that the right to waive will be extended to other defenses concerning which the law is as yet unsettled. See *Williams on Executors*, 7th edition, p. 1801; *Woerner's Law of Administration*, pp. 841, 843; 15 Mass., 8, note.—*Harvard Law Review.*

Law Blanks at the Law Reporter 503, E.

THE COURTS.

Supreme Court of the District of Columbia.

IN EQUITY—New Suits.

January 7, 1892.

32444. *Millie Lindsey v. Frank Lindsey.* For divorce. Com. sol., C. Carrington.

32445. *David Murphy, executrix, etc., v. Rose Lynch et al.* To administer trust. Com. sol., M. J. Colbert.

32446. *Arthur E. Bateman et al. v. Harvey Durand et al.* For injunction on sale, etc. Com. sol., H. H. Wells.

32447. *The Washington Market Co. v. The District of Columbia.* To declare text of contract for account and injunction.

January 11.

32448. *Mary Farnsworth v. William Farnsworth.* For divorce. Com. sol., Albert Sillera.

32449. *Edward Hoeke v. M. V. B. Bogan et al.* To correct deed. Com. sols., Morris & Hamilton and M. J. Colbert.

January 13.

32450. *E. W. Kirby v. Emeline M. Kirby.* For divorce. Com. sol., Belva A. Lockwood.

32451. *Annie Laura Galliher et al v. H. N. McIntyre.* For partition of real estate. Com. sols., J. Altheus Johnson and I. B. Linton.

AT LAW—New Suits.

January 4.

32486. *Heller & Co. v. Jos. K. Strasburger.* Account, \$238.75. Plffs. atty., Jno. C. Heald.

32487. *Jake Frank, to the use of Julius Baumgarten, v. Thos. J. King.* Damages, \$12,000. Plffs. atty., G. A. Prevost.

32488. *W. O. Dennison v. The District of Columbia.* Certiorari. Plffs. atty., T. A. Lambert.

January 5.

32489. *A. F. Lucas v. C. M. McGowan et al.* Notes, \$5,000. Plffs. atty., S. T. Thomas.

32490. *Geo. C. W. Magruder v. A. J. Schwartz.* Appeal.

32491. *F. C. George v. Paul A. Andrews et al.* Account, \$928.77. Plffs. atty., Wm. Myer Lewin; Defts. attys., Webb & Webb.

January 6.

32492. *William H. Ayres v. The Washington Investment and Commission Co.* Plffs. atty., A. B. Duvall.

32493. *Annie Bowling v. Jno. H. Carll.* Appeal. Plffs. atty., W. K. Duhamel.

32494. *Fritz Schneider v. W. H. Douglass et al.* Appeal. Defts. atty., H. E. Davis.

32495. *Geo. J. Greenly v. Geo. H. Miller.* Damages, \$5,000. Plffs. attys., Smith & Albright.

January 7.

32496. *Jno. M. McCalla, trustee, appellee, v. Frank Miller, appellant.* Appeal. Plffs. atty., E. H. Thomas.

32497. Mary R. Archer v. The Republican National League. Account, \$1,774.20. Plffs. atty., W. G. Johnson.

32498. W. H. Church v. Charles Medford. Account, \$400.

32499. John H. Crane v. The Washington Market Co. Appeal. Deft. attys., Birney & Birney.

January 8.

32500. Mary Keane, admx., v. The District of Columbia. Damages, \$10,000. Plffs. atty., Birney & Birney.

32501. Chris. Rosendale et al. v. Charles Liesman. Judgment of Justice Taylor, \$67.95.

January 9.

32502. Spencer Lee v. Hugh McCaffrey. Appeal.

32503. John C. Louthan v. A. Salzstein. Note, \$150. Plffs. atty., H. B. Moulton.

32504. Stilson Hutchins v. Richard Weightman. Note, \$4,600. Plffs. attys., Worthington & Heald.

32505. Frank Hume v. Ann Maria Watson. Account, \$300. Plffs. atty., W. A. Johnston.

32506. George Baldwin et al. v. Bateman & Co. Account, \$29,292.20. Plffs. atty., Nathl. Wilson.

32507. James L. Barbour & Co. v. The B. & P. RR. Co. Replevin. Plffs. attys., A. S. Worthington and J. P. Shepperd.

32508. Julius Lansburgh v. The Columbia Guano & Phosphate Co. Note, \$463.20. Plffs. attys., M. F. Woodward and A. A. Lipscomb.

NOTICE.—The Corporators named in the Certificate of Incorporation of The Schillinger Curbing and Paving Company give notice that a meeting of Stockholders will be held at the Company's Office on January 26, 1892, to make by-laws, elect directors, and transact such other business as is necessary. L. P. Wright, John C. Poor, H. T. Woods, H. J. McLaughlin, H. H. Wainwright.

Legal Notices.

Rule of Court.

RULE 20. * * * * * Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

FIRST INSERTION.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters Testamentary on the personal estate of PATRICK J. MURPHY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 11th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hand this 11th day of January, 1892.

S. R. BOND.
CHARLES W. HANDY.
321 4½ St. n. w.

Legal Notices.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of MARY HELEN CHURCHILL BAIRD, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of January, 1892.

LILY HUNTER BAIRD,
2 R. E. Pairo, Proctor. 1445 Massachusetts Ave. n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

January 9th, 1892.

In the case of Henry Wise Garnett and Samuel P. Bell, Executors of ANNA M. C. SMITH, deceased, the Executors aforesaid have, with the approval of the Court, appointed Friday, the 12th day of February, A. D. 1892, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER and in the Evening Star previous to said day.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
2 No. 4198. Ad. Doc. 16. Randall Hagner, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

January 8th, 1892.

In the case of Genevieve T. Yager, Administratrix, c.t.a. of BERTRAND S. ASHBY, deceased, the Administratrix c.t.a. aforesaid has, with the approval of the Court, appointed Friday, the 12th day of February, A. D. 1892, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administratrix c.t.a. will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER and in the Evening Star, of Washington, D. C. previous to the said day.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
2 No. 3893. Ad. Doc. 15. Edwards & Barnard, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

January 9th, 1892.

In the case of Charles M. Matthews, Executor of ACHSAH C. DAVIS, deceased, the Executor aforesaid has, with the approval of the court, appointed Friday, the 5th day of February, A. D. 1892, at 1 o'clock p. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the said Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
2 No. 4200. Ad. Doc. 16. Henry S. Matthews, Proctor.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

The 12th day of January, 1892.

Matthew Semple, and Robert A. Semple,
trading as Semple & Co., plaintiffs,
vs.
Job W. McAfee, John Q. McAfee, and
Harry C. McAfee, trading as McAfee &
Bros., defendants.

No. 82,818.
At Law. Docket -

On motion of the plaintiff, by Messrs. Gordon & Gordon, their solicitors, it is ordered that the defendants, JOB W. McAFFEE, JOHN Q. McAFFEE, and HARRY C. McAFFEE, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to condemn certain credits of defendant's heretofore attached in this cause.

By the Court. M. V. MONTGOMERY, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.

2 By H. W. Hodges, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

George E. Emmons } vs.
Moses Kelley et al. } In Equity. No. 18,519.

On motion of the complainant, by Messrs. Padgett & Forrest, his attorneys, it is this 9th day of January, 1892, ordered that the defendant, Charles E. Prentiss, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to substitute a trustee in the place and stead of Charles E. Prentiss, named as trustee in the certain deed of trust in the bill of complaint set out.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: J. R. Young, Clerk.
2 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business.

January 18th, 1892.

In the case of Frank M. Parker, Administrator of the estate of MARY E. PARKER, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 12th day of February, A. D. 1892, at 11 o'clock a.m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
2 No. 4237. Ad. Doc. 16. William Twombly, Proctor.

SECOND INSERTION.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,**

Christine Cecilia Coleman,
and Francis E. Richards } vs.
Alexander Webster Richards. }

No. 13,471. Eq. Doc. 32.

Joseph J. Darlington and W. Woodville Flemming, the trustees in the above entitled cause, having reported to the Court that they have sold the real estate in these proceedings described, being original lot numbered six (6) in square numbered seven hundred and forty-two, (742), the north-western portion of said lot to Christine Cecilia Coleman for eighteen hundred and twenty-five (\$1,825) dollars; the south-west portion to Francis E. Richards for eighteen hundred and twenty-five (\$1,825) dollars, and the eastern portion of said lot six (6) to Jefferson B. Cralle for two thousand and fifty-three (\$2,053) dollars, making a total of five thousand seven hundred and fifty-three (\$5,768) dollars: It is by the Court, this 4th day of January, 1892, ordered that said sale be ratified and confirmed unless cause be shown on or before thirty days after the date thereof.

Provided a copy of this order be published in the Washington Law Reporter for three successive weeks prior to the expiration of said thirty days.

A. B. HAGNER, Justice.
A true copy. Test: J. R. Young, Clerk.
1 By M. A. Clancy, Asst. Clerk.
[Filed January 4, 1892. J. R. Young, Clerk.]

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of JOHN HOOVER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 31st day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 31st day of December, 1891.

ARTHUR A. BIRNEY,
458 Louisiana ave.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

The 6th day of January, 1892.

J. Henry Bentz Sr. et al. } vs.
Alice K. Seligson et al. }

No. 18,506. Docket 33.

On motion of the complainants by Thomas M. Fields, their solicitor, it is ordered that the respondents, THE UNITED SECURITY LIFE INSURANCE AND TRUST COMPANY of Pennsylvania, and CONSTANTINE H. WILLIAMSON, trustee, cause their appearance to be entered herein on or before the first rule-day, occurring forty days after this day; otherwise this cause will be proceeded with as in case of default.

The object of this suit is to administer the estate of Herman A. Seligson, deceased, and to sell lot 166 and part of lot 158 in Beall's addition to Georgetown; subdivision lot 35 in Square 823, and land in Johnson County, Kentucky, to pay the debts of said deceased.

A summons duly issued to the said respondents was returned "not to be found," on December 1, 1891.

By the Court. A. B. HAGNER, Asso. Justice.
A true copy. Test: J. R. Young, Clerk.

By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of January, 1892.

J. Henry Bentz, Sr., et al. } vs.
Alice K. Seligson et al. }

No. 18,506. Docket 33.

On motion of the complainants, by Thomas M. Fields, their solicitor, it is ordered that the respondents, THE UNITED SECURITY LIFE INSURANCE AND TRUST COMPANY of Pennsylvania, and CONSTANTINE H. WILLIAMSON, trustee, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise this cause will be proceeded with as in case of default.

The object of this suit is to administer the estate of Herman A. Seligson, deceased, and to sell lot 100 in Groff's subdivision of square 180, to pay the debts of said deceased.

A summons duly issued to the said respondents was returned "not to be found," on December 1, 1891.

By the Court. A. B. HAGNER.
A true copy. Test: J. R. Young, Clerk.

By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of January, 1892.

The Washington Loan and Trust Co. } vs.
Thomas V. Hammond et al. }

No. 18,583. Eq. Doc. 33.

On motion of the plaintiff, by Mr. John B. Larner, its solicitors, it is ordered that the defendants, WILLIAM McCALLUM, AGNES McCALLUM, and the unknown heirs of ANDREW McCALLUM, deceased, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to declare a certain deed in fee simple to part of lot 87 in Susan E. Cunningham's subdivision of lots in square 98, Washington, D. C., from the said defendant Hammond to said Andrew McCallum, deceased, a mortgage, and for sale of said property for payment thereof.

Said notice to be published once a week for each of four successive weeks in The Washington Law Reporter and The Evening Star and New York Herald.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
1-4t. By M. A. Clancy, Asst. Clerk.
[Filed January 6, 1892. J. R. Young, Clerk.]

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

J. Henry Neatz, Sr., et al. } vs. Equity, 18,507. Docket 38.

Alice K. Seligson et al. }

It appearing to the court that summonses were issued in this cause to the respondents, Hugh Nelson, trustee, and Rose B. Ickis, and that the same were duly returned "not to be found," on December 1, 1891; and that said respondents have neither appeared nor answered therein: It is, by the Court, this 6th day of January, A. D. 1892, upon motion of Thomas M. Fields, solicitor for complainants, ordered that the said respondents cause their appearance to be entered herein on or before the next rule-day occurring forty days after this date; otherwise this cause will be proceeded with as in case of default.

The object of this suit is to administer the estate of Herman A. Seligson, deceased and to sell lots 125 and 126 in Brown's subdivision of Mount Pleasant to pay the debts of said deceased.

By the Court.

True copy. Test: A. B. HAGNER.
1 J. R. Young, Clerk.
 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 7th day of January, 1892.

Edward T. Mathews et al., Trustees, } vs. In Equity. No. 18,628.
 Rachel B. Mathews et al.

On motion of the complainants, by Mr. W. Mosby Williams, their solicitor, it is ordered that the defendants, RACHEL B. MATHEWS, CHARLES S. MATHEWS, MINNIE M. MATHEWS, CHARLES W. HAYES, SOPHIA S. CHAPPELL, WILLIAM CHAPPELL, LOUISA C. POLK, TRUSTEN POLK, ELIZA A. MATHEWS, CHARLES A. MATHEWS, MARY D. M. MATHEWS, ANDREW S. MATHEWS, WILLIAM B. MATHEWS, GEORGE W. MATHEWS, ABBIE C. MATHEWS, MARY C. MATHEWS, LAURA MANDEVILLE and HENRY C. MANDEVILLE, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a decree for sale to make partition of original lot numbered three (3) in square numbered four hundred and eighty-eight (488) in the city of Washington, District of Columbia, of which William Penrose Mathews, the elder, died seized as alleged in the bill.

A. B. HAGNER, Justice.
True copy. Test: J. R. Young, Clerk.
1 By M. A. Clancy, Asst. Clerk.
[Filed January 7, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

John Van Ness Philip } vs. No. 18,817. In Equity.
 Eliza W. Philip et al.

Charles Worthington, trustee in the above entitled cause, having reported the sale by him of part of square numbered five hundred and ninety-five in the city of Washington, District of Columbia, contained within the following metes and bounds, to wit: Beginning for the same at a point one hundred and twenty-seven feet six and one-half inches south, on the east line of said square, from the north east corner thereof, and running thence west and parallel with the north line of said square one hundred and seventy-two feet; thence south one hundred and sixty-two feet three and one-half inches to the south line of said square; thence on said south line east one-hundred and one feet one inch to the south east line of said square; thence on said south east line north east to the east line of said square and thence in a straight line north to the beginning, to Samuel Bensinger at and for the sum of five thousand seven hundred and sixty-seven dollars and sixty cents; it is by the Court this 4th day of January, A. D. 1892, ordered that said sale be finally ratified and confirmed unless cause to the contrary be shown on or before the 4th day of February, A. D. 1892.

Provided a copy of this order be published in the Washington Law Reporter for three successive weeks prior to said day.

A. B. HAGNER, Justice.
True copy. Test: J. R. Young, Clerk.
1 By L. P. Williams, Asst. Clerk.
[Filed January 4, 1892. J. R. Young, Clerk.]

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

John F. Vogt et al. } vs. Equity. No. 18,812.

Wilbur J. Allen et al. }

Edward H. Thomas and Henry F. Reh, the trustees appointed in this cause, having reported heretofore to the Court that they have sold the real estate in said cause, being part lot 2, square 527, to Louis Bernan for \$2,550, it is by the Court, this 5th day of January, A. D. 1892, in lieu of the former order nisi, ordered: that said sale be ratified and confirmed unless cause to the contrary thereof be shown on or before the 2d day of February, A. D. 1892.

Provided a copy of this order be published once a week for each of three successive weeks prior to said last mentioned day in the Washington Law Reporter.

(Signed) A. B. HAGNER.
1 J. R. Young, Clerk.
 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of January, 1892.

Doris Grue, Plaintiff, } vs. No. 18,622. Docket 38. Equity.
 Nettie Ortenstein et al. Defendants.

On motion of the plaintiff, by Mr. E. H. Thomas, their solicitor, it is ordered that the defendants, NETTIE ORTENSTEIN, HENRIETTA BOSENSTOCK, MAX MILLER, HERMAN MILLER, TONIMILLER, and JACOB MILLER, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day, otherwise the cause will be proceeded with as in case of default.

The object of this suit is to substitute a trustee in the place of Nehemiah H. Miller, deceased, trustee named in deed of trust on lots 1, 2, 19 and 20, square 960, Washington City, District of Columbia.

By the Court. (Signed) A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
1 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Emma B. Morris, Complainant, } vs. No. 18,845. In Eq. No. 33.
 Mary Berdette et al., Defendants.

The trustee herein, Benjamin F. Leighton, having reported a sale of the real estate in these proceedings described, to wit, the East 18 feet on D street of lot 1 in square 580, by the full depth thereof, to Patrick Smyth, for the sum of \$2,700, and the 18 feet 6 inches on D street next adjoining the East 18 feet of said lot 1 in square 580, by the full depth of said lot, to the said Patrick Smyth, for \$1,886.68, and the South 14 feet by the full depth of lot 14 in square 580 to Emma B. Morris, for \$1,775.00. It is, this 30th day of December, A. D. 1891, ordered, adjudged and decreed that said sales be, and the same are hereby ratified and confirmed, unless cause to the contrary be shown on or before the 30th day of January, A. D. 1892.

Provided a copy of this order be published once a week for three successive weeks before that day in the Washington Law Reporter.

W. S. COX, J.
True copy. Test: J. R. Young, Clerk.
1 By L. P. Williams, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

January 2, 1892.

In the matter of the Estate of VIRGINIA ROULOT, late of the City of Washington, D. C., deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Jacob Lefo, of the City of Washington, D. C.

All persons interested are hereby notified to appear in this Court on the 29th day of January, next, at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter, and Evening Star, previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT.
1 Register of Wills for the District of Columbia.
 W. K. Duhamel, Proctor.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of GEORGE WHITE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 30th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of December, 1891.

JOHN C. HEALD,
900 F St. n. w.

THIRD INSERTION.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphan's Court Business, Letters of Administration on the personal estate of ADOLPH MILLER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of December, 1891.

EMMA MILLER,
1205 20th St. n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of MOUNTJOY BARRY HANSON, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of December, 1891.

ALBERT B. BIBB,
1324 F St. n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration, c.t.a. on the personal estate of HENRY F. BREUNINGER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 28th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of December, 1891.

ALLEN S. JOHNSON,
53 Edwards & Barnard, Proctors. 1240 9th St. n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business.

December 29th, 1891.

In the case of Job Barnard, Administrator c. t. a. of STEWART J. GAAS, deceased, the Administrator c. t. a. aforesaid has, with the approval of the Court, appointed Friday, the 29th day of January, A. D. 1892, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator c. t. a. will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test:

L. P. WRIGHT.

Register of Wills for the District of Columbia.
53 No. 4246. Ad. D. 16. Edwards and Barnard, Proctors.

Legal Notices**The Maryland Coal Company**

v. { At Law. No. 26,125.

A. M. Brandt.

Upon application of M. F. Morris, attorney for the plaintiff in the above entitled cause, it is by the Court this 29th day of December, A. D. 1891, ordered that the defendant, A. M. Brandt, employ new counsel to represent him in the said cause, on or before the 29th day of January, A. D. 1892.

Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said day.

Test:

J. R. Young, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
The 31st day of December, 1891.

Mary F. Anderson } v. { No. 13,537. Eq. Docket, 33.

John A. Anderson. }

On motion of the plaintiff, by Mr. John Cruikshank, her solicitor, it is ordered that the defendant, JOHN A. ANDERSON, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to procure a decree of divorce from the bond of marriage now subsisting between the plaintiff and the defendant.

By the Court.

True copy. Test: J. R. Young, Clerk, &c.

53 By M. A. Clancy, Asst. Clerk.

[Filed December 31, 1891. J. R. Young, Clerk.]

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters of Administration on the personal estate of MARY STEPHENSON, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 26th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of December, 1891.

JAMES A. WATSON, Anacostia, D. C.

53 Randall Hagner, Proctor. IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

In the matter of the Petition } of John M. Lackey for { No. 13,634. Equity.
change of name.

On motion of said petitioner, by Edwards & Barnard, his solicitors, it is this 31st day of December, 1891, ordered: that the petition herein be heard and considered on Monday, February 1st, 1892.

Provided a copy of this order be published in the Washington Law Reporter for three consecutive weeks before said day.

The petition herein states, that said petitioner is thirty years of age; that for five years last past he has resided in said District; that his name is frequently confounded with "Lockey," "Leckey," and "Lackey," to his inconvenience; and that he believes the name of "Lacey" is evolved from "Lackey"; and he prays that he may be allowed to change his surname by omitting the "K" therein.

W. S. COX, Justice.
A True copy. Test: J. R. Young, Clerk, &c.

53 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Daniel R. Case } vs.

Anna R. Case et al. } Equity No. 13,202.

Edward S. McCalmon, the trustee herein, having reported to the court, that he has sold the property described in the proceedings in above cause, to wit, lots 138, 139 and 140 of John B. Alley and William Sharon's recorded subdivision of Square No. 155, in the city of Washington, D. C., at public auction to A. E. Culver for \$45,000; and it being represented that said Culver has assigned all his rights in such purchase to Daniel R. Case; it is, this 24th day of December, 1891, ordered, that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 25th day of January, A. D. 1892.

Provided a copy of this order be published in the Washington Law Reporter once a week for four successive weeks before said last mentioned date.

A. B. HAGNER.

True copy. Test: J. R. Young, Clerk.
53-4t By M. A. Clancy, Asst. Clerk.

[Filed December 24, 1891; J. R. Young, Clerk.]

The Washington Law Reporter.

ESTABLISHED, 1874.

VOL. XX.

[WEEKLY]

No. 3

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EDITED BY FRANKLIN H. MACKAY.

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WASHINGTON, D. C., - - - JANUARY 21, 1892

THE right of a municipality to enact an ordinance requiring the owner of property fronting on a street to keep the sidewalk clean from snow and ice and prescribing a penalty for a violation thereof, while disputed by some very respectable authorities—see Gridley v. City of Bloomington, 88 Ill., 554; Chicago v. O'Brien, 111 Ill., 532—is, we believe, generally conceded. It is also well settled that the failure of the abutting owner to comply with such an ordinance does not render him liable directly to one injured by falling upon the snow or ice accumulated in front of the property. The right of action by the injured party is against the city which cannot transfer to a third party the duty that it owes to its citizens to keep the sidewalk in safe condition. A phase of the question not so well settled, however, is whether, when damages are recovered against the municipality in such a case, it may maintain an action over against the abutting owner. As a logical conclusion it would seem to follow that it may not. And it was accordingly so held in a recent case decided by the Supreme Court of Missouri, in St. Louis v. Connecticut Mutual Life Ins. Co., where it was said by the court:

The damages recovered by Mrs. Norton were for a breach of the city's duty to keep its streets reasonably safe from defects resulting from the operation of natural causes. To Mrs. Norton, the defendant owed no such duty. The only duty it owed in regard to the sidewalk was to the city. The duty was created by the city in

its ordinances, in which it prescribed for itself and its citizens the measure of damages for its neglect in the penalty imposed for their violation. The damages the city was compelled to pay may have been the result of its failure to promptly and efficiently enforce its ordinances. But it was its duty to enforce them, and not that of the citizen. The duty of the citizen is to obey, and, if he fail to obey, to pay the penalty which the city imposes for such failure, and not the damages which the city may be compelled to pay for its neglect to perform its duty.

Authorities upon the question will be found in 2 Shear & Redfield on Negligence, Sec. 343, for the same injury (in support see Kirby v. Association, 14 Gray, 249; Van dyke v. Cincinnati, 1 Disn., 532; Heeney v. Sprague, 11 R. I., 456; Flynn v. Canton Co., 40 Md., 312; Moore v. Gadsden, 93 N. Y., 12; City of Hartford v. Talcott, 48 Conn., 526; City of Keokuk v. Independent Dist. of Keokuk, 53 Iowa, 352, 5 N. W. Rep., 503; 2 Black, Jdm., Sec. 575; 2 Dill. Mun. Corp., 4th ed., Secs. 1012, 1035.)

EIGHTEEN thousand decisions for the year ending September, 1891, represent the field worked over by the last volume of the Annual Digest published by the Cooperative Publishing Company. One has only to look back to the work covered by the old United States Digest in any of the seventies to satisfy himself of the immense progress made in the business of Digest making. From meagre notes, poorly classified, to the elaborate and studiously prepared work of the recent volume, with numerous cross-references, covering in its scope not only the entire United States, but all of the important decisions of England and Canada, is a progression which puts comparison almost out of the question. One might as well attempt a comparison between the last edition of Benjamin on Sales with the first edition of Blackburn, or the American Encyclopedia of Law with Jacobs' Dictionary. From the mighty flood of decisions pouring forth from the courts, the only refuge for the lawyer who would feel

satisfied that he has the latest law upon his brief is the last digest of the Co-operatives.

WE give considerable of our space this week to a most excellent article from the *Virginia Law Journal* upon the subject of law reform. Although its special purpose is to advocate the adoption in Virginia of the procedure recommended in the report of the special committee on law reform to the Virginia State Bar Association, yet the writer is so filled with the breath of the true law reform that the whole article may be read with profit anywhere and by anyone whose heritage it is to live under seventeenth century laws in a nineteenth century land. This is the kind of reading that the younger generation of lawyers need to get hold of. Then, with the progressing years, there will be found fewer and fewer of the men who, to adopt the closing quotation of Mr. Patterson, are ever crying—

"Let us hush this cry of 'Forward' till ten thousand years have gone."

Supreme Court of the District of Columbia.
IN GENERAL TERM.

IN RE PATENT APPEAL OF
GEORGE F. GREEN.

1. An invention is not to be regarded as anticipated because it combines distinct elements existing in different combinations in former patents in order to make a combination that never before existed.
2. Where the application for an electric invention claims as a source of electric supply "any known means of supply," the applicant is not to be limited to any one of such means of supply because in illustrating his invention he used that particular means.

No. 92, Patent Appeals. Decided November 23, 1891.
The CHIEF JUSTICE and Justices COX and JAMES sitting.

APPEAL from the Commissioner of Patents, decision of the officer reversed.

THE FACTS are stated in the opinion.

Mr. JULIAN C. DOWELL for appellant.

Mr. S. J. FISHER for appellee.

Mr. Justice COX delivered the opinion of the Court:

We have had under consideration an appeal from the Commissioner of Patents in the matter of the application of George F. Green for an in-

vention of a new and useful method of propelling cars by electricity.

The application was filed on the 19th day of August, 1879. The applicant appears to have been a somewhat illiterate and uninformed man and undertook to prepare his own specifications and claims, without being equipped for that duty. The consequence was that various amendments were suggested on the part of the Patent Office, and made from time to time in his claims and drawings; so the claims as they stand at present are in the following form:

"1. The combination substantially as set forth, of a railway track, one or more stationary means of electric supply electrical conductors extending from said means of supply along the lines of said track and consisting wholly or in part of the rails thereof, vehicles moving along said track, electric dynamic motors whose coils are constantly excited so long as the poles of said motor are in circuit with the means of electric supply, fixed upon said vehicles for imparting motion thereto, and wheels supporting said vehicles upon the track and also serving to maintain continuous electrical connection between said means of electrical supply and motors, substantially as described.

"2. The combination substantially as set forth, of a railway track, one or more stationary electric batteries, electrical conductors extending from said batteries along the line of said track and consisting wholly or in part of the rails thereof, vehicles, moving along said track, electric dynamic motors whose coils are constantly excited, so long as the poles of said motor are in circuit with the electric batteries fixed upon said vehicles for imparting motion thereto, and wheels supporting said vehicles upon the track, and also serving to maintain continuous electrical connection between said batteries and motors, substantially as described.

"3. The combination, substantially as set forth, of a railway track, one or more stationary means of electrical supply, electrical conductors extending from said means of electrical supply along the lines of said track and consisting wholly or in part of the rails thereof, vehicles movable along said track, electric dynamic motors fixed upon said vehicles for imparting motion thereto, and wheels supporting said vehicles upon the track, and also serving to maintain electrical connection between said means of electrical supply and said motors, substantially as described.

"4. The combination of a railway track, one or more stationary means of electrical supply, electrical conductors extending along the lines of

said track and consisting wholly or in part of the rails thereof, vehicles moving along said track, rotating electric dynamic motors fixed upon said vehicles for imparting motion thereto, wheels supporting said vehicles upon the track and also serving to maintain continuous electrical connection between said means of electric supply and said rotating motors, substantially as described.

"5. The combination, substantially as set forth, of a railway track, one or more stationary sources of electric energy, electrical conductors extending from said source or sources of electric energies along the line of said track, vehicles movable along said track, rotating electric motors fixed upon said vehicles for imparting motion thereto, and suitable contact devices serving to maintain continuous electrical connection between said motors and the conductors extending from said stationary source or sources of electric energy, substantially as described."

The fifth claim is a little more comprehensive than the others, but inasmuch as we do not think it is important, we will not waste any time upon it.

It is true that when the application was first filed, the only claim was for a track. "The track being used as a cable to connect the engines on the cars with the electric supply at the end of the track or at different stations along the track as set forth in the foregoing specification." But the specification shows a combination including the identical elements above described. The Patent Office has laid no stress upon the meagreness of the original claim, but the application has been rejected on several grounds; first, because of certain other unused patents of a prior date, which are supposed to have anticipated this invention. The first one is known as the Pinkus patent, dated in 1840. Now, in order to judge of the difference between that and the present invention, it is proper to ascertain what the elements are in the combination for which the patent is sought. The claim is, first, a railroad track; next, a source of electric supply; next, conductors extending from the sources of supply along the track and consisting wholly or in part of the rails of the track; next, a wagon or vehicle moving on the track; next, wheels supporting the wagon or vehicles, and also serving as conductors to collect the electric current; and, lastly, an electric engine or motor fixed on the vehicle, through which the electric current was to proceed and by the operation of which the movement of the vehicle is effected. There are two differences

between the Pinkus patent and the invention under consideration. One is, that in the Pinkus patent the rails are not used as conductors for the electric current; the other is, that the wheels of the cars are not used for the electric current to be transmitted from the conductors to the motor. This, we think, is a sufficient answer to the reference to the Pinkus patent. This much seems to be admitted in the decision of the Commissioner of Patents, who says: "If the Pinkus patent represented the entire prior art, there would be doubt whether said claims might not contain patentable novelty. In view of the fact, however, that the Dugmore and Millward patent exhibits the feature of transmitting the current along the rails and through the wheels, I think the examiners in chief should be sustained in holding that the references are anticipatory." The Commissioner thinks that the examiners in chief should be sustained, that the references are anticipatory. In other words, the position seems to be taken that distinct elements may be taken from different combinations in order to make up a new combination that never before existed, as an anticipation of that which the applicant claims. We do not recognize any such right as that. The only ground upon which that is claimed, perhaps, is for the purpose of ascertaining the prior state of the art. The element which is said to supply what is wanted in the Pinkus patent is an extra pair of rails described in the Dugmore and Millward patent. In other words, it seems to be said that while the Pinkus patent does not refer to the rails, it does provide for a conductor. According to the then state of the art, rails were then known as a conductor, and were the mechanical equivalent for the element in the Pinkus combination. We do not think this is so, for several reasons. The Dugmore and Millward patent seems to be an invention for signalling from one train to the other, and provides for two distinct bars, rods or rails laid down in the middle of the main track, and for two independent wheels rolling upon these bars or rails, situated near the center of the car. The electric current was to be started from one train and carried along over one of these rails to the other train and then to sound the signal and the other rail completed the circuit. The whole object of that was that one train might signal another. The distinct idea of propelling the cars did not enter into the invention at all. It would be sufficient to say, even if it did, that the dispensing with all those expenses of two extra rails and wheels and substituting the traction wheels and traveling rails would be of itself

a patentable difference. It has never been suggested before, and when we consider that the present claim relates entirely to the propulsion of the cars, we do not think the state of the art justified any reference to that feature as anticipating the claim of Green, which involves the operation of the traveling rails and traction wheels for the conduction and collection of the electric current. The only other thing referred to as anticipating the invention is an article in the *Mechanics' Magazine*, Volume 43, which is nothing more than a suggestion of what might possibly be accomplished in the future. The article is in the following terms: "Now suppose we have a railway 10 miles long, and that at one terminal house there is placed an enormous stationary galvanic battery; might we not make the rails themselves the conducting lines of the battery; and the wheels being so arranged as to break the connection where required, a rotating magnet might revolve by the electro-magnetism thus communicated. The first which is immediately suggested is, how much of the galvanic current would escape by the earth, across the rails? Now, surely if half the trouble that has been expended on the value of the exhausted tubes of atmospheric railways were to be employed here, we should soon have some method of cheap insulation invented. Imbedding in wood prevents a great deal of this loss, and this difficulty seems to be the only one. Of course the axles of the wheels of the train must be of some non-conducting substance; they might, like the wheel tires, be of wood. Perhaps some fertile brain may take the hint and bring forth soon the electric railway."

The Commissioner himself says of this, "This may be regarded as a mere suggestion. It expresses a conception of the invention, and perhaps nothing more. It seems to be defective in that it does not place the invention in the possession of the public as fully as if the art or instrument itself had been practically and publicly employed."

We need not suggest any further comment upon that, as the suggestion made there was never carried into a test. That may be said also of both the other patents. They do not appear to have ever been reduced to practice, whereas Green did reduce his to practice. He constructed a railway 200 feet in length and a car and used a battery and did propel his car over this track back and forth so as to prove his invention. We therefore think, on this reference at least, the Commissioner of Patents is wrong in holding that this application should be rejected.

The next ground is that the applicant's claims

in their present form contain certain new matter, and are a departure from the claim as originally filed. As originally filed, one of the elements claimed was an engine on the cars with the electric supply at the end of the track or at different stations along the track, and the present claims specify the form of that engine. Two of the claims specify the engine or motor, or, as it is called, the "electric dynamic motors, whose coils are constantly excited so long as the poles of said motor are in circuit with the means of electric supply fixed upon said vehicle for imparting motion thereto," and in the two other claims the motor is called an electric dynamic motor. Now, they say, in the office, that this is a departure from the original claim, being new matter, and if he is entitled to a patent at all he must make a new application, and of course be subjected to all intervening priorities; his first claim having been filed back in 1879, twelve years ago. There can hardly be any doubt that the term "engine," in the connection in which he used it in his first application, and, as described in the first application, meant *an electric engine*. It is the same thing as an electric motor. I say that, because he himself had the patent for this very electric motor described in these other claims, and when he spoke of an engine he must be understood to have had reference to an electric motor to be attached to the cars. In view of the state of the art, it had no other meaning than that; and, if so, that would embrace any form of motor. Strangely enough, the examiner himself, in the letter of June 25, 1889, says: "There is no objection to applicant's stating in the specifications that he may use the motor described in the patent, but he cannot claim that motor specifically in this case and cannot have any claim which rests wholly for its novelty on the specific construction of a motor which was not shown or described in the original specification." Now, if he can state in his present specification, under this claim of electric engine, that he *can use or will use this motor*, it must be that a general claim of an electric motor covers this as well as other motors. If so, we are at a loss to see why he cannot restrict his claim. If he can claim a motor generally, *a fortiori* he can claim as one of the elements in this combination, a motor whose coils are constantly excited so long as the poles of said motor are in circuit with the means of electric supply fixed upon said vehicle for imparting motion thereto. If, at the time he claimed it, it had appeared that somebody else had invented a combination covering motors generally, it might be ground for the position

taken in the office, that he could not avoid interference by limiting his claim to a particular form; but, so far as we are advised, in specifying the motor, he interfered with nobody but him self, and we have been unable to see that this, as new matter, should deprive him of the benefit of his original application. Therefore, we think there was an error in the ruling of the Commissioner.

One other point should be referred to. The Commissioners says: "In any event, the history of the interference proceedings to which Green was a party, and from which this application was excluded because the source of electrical supply was a battery, and not a dynamo, would require the case to be amended so as to be limited to a battery instead of means of electrical supply." One of the elements in the combination was, as he first filed his claim, "I charged my track or track rails with electricity, produced by any of the known methods of producing electricity," and he illustrates his invention further by speaking of a battery, but he claimed that his original invention included *any known means of supply*, electric-dynamic, as well as battery. And the evidence before the Commissioner tended to show that he desired to purchase a dynamo, but was prevented by lack of means. The fact is, I believe, that the battery would not furnish a sufficient supply. Now, the Commissioner says, because he did not specify a dynamo in the first instance, although he claimed any source of supply by any of the known methods of producing electricity, he is limited to a battery. We do not think that is so, because, as I said before, in his original specification, he states, "I charge my track or track rails, with electricity produced by *any of the known methods of producing electricity*."

The statute limits us to a decision upon reasons of the appeal. They are, in other words, assignments of error; and the reasons of appeal assigned by the claimant relating entirely to these interferences and to the decision that the specification of a form of motor was a departure from the original application, and we are limited to a decision on these questions. But one other point I overlooked. The fifth claim does appear to have been anticipated by previous patents. That is a claim generally for current brought to the car by a conductor, without describing it, and suitable electric contact devices for maintaining the connection between motors and conductors, etc. There have been a number of devices for collecting electricity not confined to wheels, as, for example, in the Pinkus patent, and we threw that claim out of the case.

We shall simply decide that the decision of the Commissioner of Patents as to the matters set forth in the reasons of appeal was error, and that as far as the decision applies to the first four claims of the application the decision be reversed.

Law Reform—A Sur-Rejoinder

English-speaking peoples the world over have found in a fictitious character—in one of the novels of Sir Walter Scott—a creation so real that few can recall his image and his occupation without feelings of the deepest emotion. It is the antiquary who, after the great civil commotions, went about among the cemeteries with hammer and chisel carving anew the names and dates upon the tombstones. So powerful and absorbing is the picture which Sir Walter drew that we can hardly divest ourselves of the idea that "Old Mortality," in fact, really existed and carried on his pious work amid the tomba.

It would be harmless for some old lawyer to be employed in preserving the names and statutes of the law which have played their part and are no more. The learned gentleman from Fluvanna would perhaps suit the character of the "Old Mortality" of the Virginia bar.

"The iconoclastic hand of the ruthless innovator" should not be laid upon him as long as he is willing to play that pathetic role; but when he wants to convert others to the worship of the idols of the antiquaries of the bar he should no longer be spared.

Any man who advocates change for the sake of change alone cannot hope to find a respectable following in an intellectual profession: but the law is only a science when it follows the line of common sense and justice. To advocate the old because it is old is as illogical as it is to advocate change for the sake of change. It is barbarous in the extreme, however—almost as unreasoning as the ancestor worship of the Romans—to stick to the dead technical forms. It is absolutely certain that all the great minds of the writers and thinkers on the common law and equity jurisprudence of England, which is the heritage of all who speak our language, are now, in every department, trying to draw order out of chaos. The English "legal nomenclature is a mosaic of many languages, and the law itself, as expounded by Coke and Blackstone, except so far as it has been deduced with much logical punctilio, is little more than a collection of isolated rules, strung together, if at all, only by some slender thread of analogy." Sir Thomas

Erskine Holland's Elements of Jup., ed. 1890, page 1. The gentleman's position in the path of progress is not a secure one. He does not seem to realize that the most radical and serviceable change yet made has been in England itself, and that the old procedure has been completely overturned there, and greatly modified in all of her last colonies and in a majority of the forty-four States of the American Union.

He is as conservative as were the Lokrian settlers from Greece, in Italy, six hundred years before the birth of Christ. Grote's Greece, Ch. xxii. They were so afraid of change that they required any man who had the temerity to propose a change in the laws to appear in the public assembly with a rope around his neck, the end of which was thrown over a beam placed there for the purpose, and if the measure was rejected the poor fellow was at once hurried off to the infernal regions by the repulsive process of choking. The choking-off process is a very familiar one, which any serious reformer may encounter; but the Virginia way, while it is almost as effectual as the Lokrian, is not quite as barbarous. No one who wants change, and cares to advocate it now, need be choked off, unless he permits himself to be so treated. A man who has made up his mind to think for himself, and not to allow himself to be ruled by the sceptered ghosts of the past, can be convinced that it is safer to follow his intellectual conclusions than his sentimental feelings. Intense conservatism is more baleful in its influence than changes demanded by the march of progress.

Copernicus startled and terrified the world in 1543 by showing that the earth was not flat; that it did not have four corners, and that the sun did not revolve around it, but that the earth revolved around the sun. He reached this conclusion, and demonstrated the difference between the heliocentric and geocentric systems. This radical announcement has now been accepted as the truth by all the known conservatives upon this planet, except the Rev. John Jasper (colored), of the Sixth Mount Zion Baptist Church, at Richmond, Va., unless there are others in the Commonwealth too modest to make their names public.

The learned gentleman accuses one whom he warns against as an "iconoclastic innovator," from whose ruthless hands he would save those who fear change, of an overfondness for ancient things. How can he reconcile the charge? He has an improper conception of law and justice. Its sacredness does not consist in being bound in a cracked and worn chrysalis of pro-

cedure, but in its adaptability to the needs of civilization and progress. Roundell, Earl of Selborne, the present Lord High Chancellor of Great Britain, and the Hon. David Dudley Field, at the last annual meeting of the American Bar Association, were both voted medals as the greatest law reformers of this century. They are both of them champions of the procedure recommended in the report of the special committee on Law Reform to the Virginia State Bar Association, of which the gentleman from Fluvanna so strongly disapproves. It is more than probable that the American and English intellectual qualities are not on the decline. Nothing in nature stands still. It either retrogrades or advances. With the magnificent trophies which are now flying from the flagstaff of science, the evidence in favor of the presumption of modern superiority is well nigh overwhelming. Some of them, for a moment, may be pointed out—the steamboat, the railroad, the telegraph, submarine cable, telephone, electric car, and a thousand others. Does the tangled web of the law alone remain in a quiescent condition?

There is no danger of dwarfing the law and the profession except by looking backwards. A student of history is not apt to think that there are more than two civilizations in America—one taught by Virginia and the other by Massachusetts. The Virginians, who did more for the foundation of the Union than all of the other States, devoted themselves in the early years of the Republic to the study and formation of sound constitutional government. The Massachusetts people were with them, but the Virginians worked away with a more commanding resolution. The theories of government advanced by them have held the undivided attention of the world for more than a century. Owing to the peculiar institution of slavery, the minds of the Virginia people have been kept too long from other pressing problems. The danger has passed, and we have the present and future within which to improve ourselves.

"All legal right and wrong had its origin after human society was put in motion and began to reflect and act. To talk of law and right as applied to mankind at a supposed period anterior to society beginning to think and act is a contradiction in terms." Holland's Elements of Jup., 32. It seems that Mr. W. B. Pettit would like to follow Lord Coke's *dictum* in Bonham's Case—that is, put the common law, forms and all, above experience, statutes and common sense. 8 Rep., 118.

Institutions, however ancient, organizations,

however profoundly sacred, cannot outlive the recognition that the evil which they produce is constant and the advantage visionary. The judge is paid a salary not to use certain recognized *formulae*, but to administer justice. Can justice in the nineteenth century be administered only in the jargon which sounds sweetly to the ears of the "Old Mortalities" of the bar?

Was the old Austrian general who was terribly whipped by Napoleon an object of ridicule or pity when he wrote home to the Aulic Council, after the battle, that a miserable parvenu from Corsica had ruined the art of war by ending the affair in a single brief campaign, when, prior to that time, it had been the habit of the good old conservatives of the Empire to spend at least a season or two in marching and counter-marching before bringing on a decisive action?

The lovers of the common law should not be permitted to forget that in the time of Edward VI all of the judges of England gravely and solemnly decided that a mother's son was not next of kin to her. Says Swinburne: (Swinburne on Willa, 7th ed., 1803, 912, 913, 918, and authorities there cited) "It hath not only been a question among the best lawyers in this land whether the mother be of kin to her child, but, after much disputation, it hath been also adjudged for the negative, viz., that the mother is not of kin to her child, as appeareth in the case commonly known by the name of The Duke of Suffolk's Case, very famous in many books. * * * In process of time the truth prevailed (for what is stronger than truth?), and the mother was held to be next of kin to her child." The truth did not get possession of the judges for nineteen years, and for that long period of time it was the law of England that a mother was not next of kin to her child.

Surely we are not to follow such teachers? The proper question to be considered is whether justice can be administered better in one form of action than in a greater number. Mr. Pettit solemnly says that after his vast experience he has never in his practice found any difficulty in choosing his forum of law or of equity. This is not the experience of the average practitioner in Virginia. He asks the "iconoclastic innovator" to give him at least one instance. Here it is, and it is a very live one: A few years ago a public officer of the city of Richmond defaulted for many thousands of dollars. His bondsmen are perfectly solvent. Counsel employed by the city were directed to institute suit against the bondsmen. They did so in action at law in the Circuit Court for the

city of Richmond. That court held that they should have sued in equity, and that there was no remedy at law. The city has appealed from this decision, and in the meantime filed its bill in equity also. The amount involved is about \$40,000.

A suit was brought on the law side of the Circuit Court of Greenbrier County, for a very large sum, a short time before the late war. Greenbrier was then a part of Virginia. Both the Circuit Court and the Supreme Court of Appeals of Virginia held that the plaintiff had no remedy at law. At the close of the war the county of Greenbrier was a part of the State of West Virginia. A bill in chancery there was held to be not the remedy, and the plaintiff was remanded to the law side of the court. It was too late, for the right of action was barred by the statute of limitations. The case is unreported. This was a denial of justice and an insult to common intelligence. The Court of Appeals of Virginia, in the case of Great Falls Mfg. Co. v. Henry's Admr., had much trouble with the question of where the remedy of the plaintiff was. Judge Bouldin, delivering the opinion, said: "The appellant, after denying and earnestly resisting the appellee's right, either at law or in equity, to recover one dollar of his claim, finds himself subjected by order of the chancery court to a judgment amounting, principal and interest, to some five thousand dollars, and to damages according to law, and the costs in both tribunals, without the pretense of a trial in either. Beirne, &c., v. Dunlop, 8 Leigh, 514; Great Falls Mfg. Co. v. Henry's Admr., 223 Gratt., 575; Jones v. Bradshaw et al., 16 Gratt., 355.

The law of Virginia to-day is, that if a suit is instituted at law and a discovery is necessary for complete defense, a bill in chancery for discovery must be filed before the common law suit goes to judgment. The defense cannot be made in any other way. Green & Suttle v. Massie, 21 Gratt., 356. Under the proposed bill this could not happen. The difficulty about the jury trial would occur under any system, but under no circumstances would the party suing be put out of court. Somebody has said that the "ancient regime in France" was "a despotism tempered by epigrams." There is nothing epigrammatic in the tyranny of the common law modes of procedure.

Progress has touched everything almost in the known civilized world. It does not seem to have reached Mr. Pettit. His conception of the meaning and objects of the law is the most ancient of which history makes mention. It is next to

"the men of the river drift" and the "cavewellers of prehistoric times. The pantomime which he would make of legal procedure has already existed in the infancy of one great nation. As at Rome, so with him, law was not born of the idea of justice, but of sacred forms, and he has not conceived it as possible for it to go beyond that stage. Says a great continental scholar of the present day: "Among the ancients, and especially at Rome, the idea of law was inseparably connected with certain sacramental words. If, for example, it was a question of contract one was expected to say, *Dari spondes?* and the other was expected to reply, *Spondeo*. If these words were not pronounced there was no contract. In vain the creditor came to demand payment of the debt—the debtor owed nothing; for what placed a man under obligation in this ancient law was not conscience or the sentiment of justice; it was the sacred formula." Fustel de Coulanges, *Ancient City*, 7th Ed., Bk. III., Ch. XI., 255.

These ancients believed that this senseless procedure came from the gods. We have no such excuse, for we know that ours came from such ungodly fellows as Coke and Jeffreys. No change could be made in the law, even by a unanimous vote of the people, unless it met with religious sanction. On one occasion, when the tribunes of the people wished to have a law adopted by the assembly of the tribes, a patrician said to them: "What right have you to make a new law? You, who have not the auspices; you, who in your assemblies perform no religious acts—what have you in common with religion and sacred things, among which must be reckoned the laws?" Livy III., 31.

What we understand in the closing years of the nineteenth century by the word "justice" is rendering to every man his due, and not dry forms and names, such as assumpit and covenant and bill in chancery. The ancients whom he loves are but babes; the real ancients are the living, active generation, who at the present moment are ruling the world and facing the sunrise of the future. The sun has gone down on those of the remote past, whose wisdom (?) he reveres, never to rise again.

In a recent number, the editor of the Albany *Law Journal* takes Mr. Pettit to task for his opposition to progress, and calls his attention to the fact that twenty-six of the States have adopted substantially the reformed procedure. All of the territories have done the same thing.

Macaulay, from whom the gentleman is so fond of quoting against the "iconoclast," was president of the commission which codified the

common law for India; and he said that the work was absolutely necessary to be done, because the common law was worse than a Mahratta invasion. Trevillian's *Life, &c.*, of Macauley, Vol. I., 363.

The gap between law and equity should be closed in Virginia. The common law forms are ridiculous and farcical. A great writer and lawyer, speaking of the old style (as it still exists with us), recently said: "Besides these grotesque forms of action, there was another tremendous chasm between law and equity. It was not uncommon to have a case decided against the plaintiff because he had entered the wrong door of the temple of justice. He should, so said the judges, have gone into equity; or, perhaps, having gone into equity, should have begun at the law. Indeed, it happened sometimes that, when the action at law had been dismissed and he had gone into equity, he was told that he must go back into law, for the court had misdirected him—had mistaken his remedy. It is said that on one occasion, in England, when the judge, after deciding against the action, observed that the plaintiff might resort to a court of equity for relief, Erskine ejaculated, in a tone of inimitable simplicity: My lord, would you send a fellow creature there?" Intolerable as this state of things was, the lawyers clung to it with a grasp as firm as if it were the sole plank to keep them from drowning. Every effort for something better was voted down or howled down. The sages of the law, as they are gravely called, the great lawyers of New York, and of England as well, frowned upon the iconoclast who sought to break the graven images in their temples." David Dudley Field in Am. Law Rev., July and August, 1891, 519. All advance must be made in "the ringing grooves of change," and it is now too late for the click of the chisel of an "Old Mortality" to make pleasant music for any one but an antiquary.

Progress is everywhere. Among the younger generation it is to be hoped that few will join Mr. Pettit in his reactionary policy, and say:

"Let us hush this cry of 'Forward' till ten thousand years have gone."

—S. S. P. Patterson in the *Virginia Law Journal*.

INDIGNANT LAWYER. If we can't get justice in this court, we shall carry the case up. Your honor may mark my words.

THE JUDGE. I have marked them, sir. They will cost you ten dollars.—*Green Bag*.

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Law Blanks at the Law Reporter 503, E.

Rights of Prisoners.

One of the most graphic pictures which the historian McMaster has drawn is that of the condition of the prisons and jails throughout the American States a century ago. It occurs in the first chapter of the first volume of the History of the People of the United States—the chapter portraying “the State of America in 1784.” Without quoting the facts in detail, we will repeat the writer’s conclusion on the subject :

“To a generation which has upheld great reforms in the statutes of criminal law and in the discipline of prisons and jails; to a generation which knows but two crimes worthy of death, that against the life of the individual and that against the life of the State; which has expended fabulous sums in the erection of reformatories, asylums and penitentiaries, houses of correction, houses of refuge and houses of detention all over the land; which has furnished every State prison with a library, with a hospital, with workshops and with schools, the brutal scenes on which our ancestors looked with indifference seem scarcely a reality. Yet it is well to recall them, for we cannot but turn from the contemplation of so much misery and so much suffering with a deep sense of thankfulness that our lot has fallen in a pitiful age, in an age when more compassion is felt for a galled horse or a dog run over at a street crossing than our great-grandfathers felt for a woman beaten for cursing or a man imprisoned for debt.”

The Revised Statutes of the State of New York provide that “The person of a convict sentenced to imprisonment in a State prison is under the protection of the law, and any injury to his person, not authorized by law, is punishable in the same manner as if he was not sentenced or convicted.”

Concerning privileges under the civil law, the Revised Statutes provide that a person sentenced to imprisonment in a State prison for life shall be deemed civilly dead, and that the civil rights of one sentenced to imprisonment in a State prison for a term of years are suspended during the term of such imprisonment. In *Avery v. Everett*, 110 N. Y., 317, it was held that property belonging to a person sentenced to life imprisonment was not divested in consequence of such sentence. The life convict in this case held a vested remainder in fee in real estate, subject to be defeated by his death without children and go over to another person. It was decided that the civil death of the vested remainderman did not pass the estate to the

substituted remainderman so that the latter could maintain ejectment. The opinion of Andrews, J., contains a valuable historical resume of the law, as well as an incidental enumeration of the disqualifications that actually do result in this State from civil death:

“The disabilities flowing from the situation of *civiter mortuus* have a wide scope, without including this incident (divesting of estate). The statute, without expressly declaring this result, assumes that a life sentence of the husband, *ipso facto*, dissolves his marriage, 2 R. S., 687, Sec. 9, Sub. 6. The convict cannot sue, although he may be sued, and his property is answerable to his creditors. But he may defend an action brought against him. Code, Sec. 131; *Davis v. Duffie*, 1 Abb. Ct. App. Dec., 489; *Bowles v. Haberman*, 95 N. Y., 246. He cannot enter into executory contracts and call in aid the courts to enforce them, but he may transfer his property by will or deed. See *Rankin’s Heirs v. Rankin’s Executors*, 6 Monroe, Ky., 531, and authorities, *supra*. His political rights are taken from him; his wife and children owe him no fealty or obedience. It is easy to suggest possible difficulties in the administration and protection of the property of a convict sentenced to imprisonment for life. These are matters which may be the appropriate subject of legislation. They have been met in England by the statute 33 and 34 Victoria, by which a trustee is appointed to administer the convict’s estate for the protection of all interests. Most of the difficulties suggested exist in the same degree in the case of convicts sentenced to imprisonment for a term of years, during which time their civil rights, by force of a prior section of the statute (Sec. 19) are suspended. But it is not claimed that this consequence divests them of their property during their imprisonment.”

With regard to injuries to prisoners confined in county jails, the recent case of *White v. Board of Commissioners of Sullivan County*, decided in the Supreme Court of Indiana in October, 1891, is in point. 28 Northeastern Reporter, 846. It holds, following and summarizing several former decisions in various States, that the care and control of prisons being within the “police power,” a county is not liable for the neglect of its officers to keep the county jail in a healthy condition. The authorities cited are *Summers v. County of Daviess*, 103 Ind., 262; *Pfefferle v. Commissioners*, 39 Kan., 432; *Manuel v. Commissioners*, 98 N. C., 9; *Watkins v. County Court*, 30 W. Va., 657; *Hollenbeck v. Winnebago Co.*, 95 Ill., 148; *Commis-*

sioners v. Migheis, 7 Ohio, 109; Kincaid v. Hardin Co., 53 Iowa, 430. These cases concur in holding, and the rule is quite well settled throughout the Union, that for torts, whether of commission or omission, committed or suffered in county jails, the doctrine of *respondeat superior* cannot be invoked, and that, therefore, a county is not responsible in damages.

In White v. Board of Commissioners of Sullivan Co. (*supra*) it is remarked: "Whether the wrongdoing officers are personally liable is quite another question." In Manuel v. Commissioners of Cumberland County, 98 N. C., 9, the court say: "The plaintiff cannot, therefore, maintain this action (against the county commissioners in their official capacity). It may be that he can have a remedy against the commissioners personally, but as to this we are not called upon to express an opinion."

In Hallenbeck v. Winnebago Co., 95 Ill., 148, the question of the individual liability of a committee of county officers for torts committed incidentally in the carrying out of the enterprise for which they were specially appointed, was raised, but the matter went off on a question of the sufficiency of pleading without a square decision of the underlying question of law. See, however, the dissenting opinion of Dickey, J., page 164.

There seems to have been a general judicial reluctance to express a decisive opinion upon the individual liability of county officers for torts against prisoners, while several dicta favor the view that such liability exists.—*New York Law Journal*.

JUDGE GREENE, of the State of ——, is a good lawyer, and somewhat of a stickler for niceties of pronunciation. Ex-Judge Denison, in arguing a motion before him, had occasion to refer to Browne on Torts, and pronounced the author's name as though it were spelled "Browny." The Judge passed the first mistake without notice; at the second he shrugged his shoulders; at the third he said, "The name is Brown, not Browny, brother Dennison."

"But it is spelled B-r-o-w-n-e," said the counself in his deep measured tones; "and if that does not spell Browny, what does it spell?"

"'Brown,' of course," sharply answered the Judge, whose patience was becoming ruffled. "My name is spelled G-r- double e-n-e, but you would not call me 'Greeny,' would you?"

Mr. Dennison turned to his books, saying apparently to himself, but loud enough to be heard all over the court room, "That will depend upon how your honor decides this motion."—*Harper's Magazine*.

The Metaphor in Jurisprudence.

The rule of the code is that at any stage of the case every declaration is amendable in substance in substance in all respects, provided there is already in it enough to amend by. The construction we are combatting holds this to mean that, if a declaration lacks any part of a cause of action, that is, any thing which is necessary to make up enough substance to resist a general demurrer, it lacks having enough to amend by and is not amendable. It holds in effect that a general demurrer is not to be "spoiled" by putting more substance into a declaration, but only by taking some out when it has an excess. You may empty by one-half if the declaration is too full, but if it is half empty you can never fill it. Nay, if it lacks anything whatever of being full, what it wants can never be supplied, though the means of supply may exist in abundant measure. Under this singular construction, a declaration too strong in substance—as, for instance, if it sets forth two causes of action which cannot be joined because one originated in tort, the other in contract—may be weakened down, but if it is too weak already, it cannot be strengthened. A declaration may take an emetic, but not more food. Curative treatment is restricted to depletion, all tonics are prohibited. We are reminded of that tender regard for a demurrer insinuated from the bench nearly two hundred years ago in Fox v. Wilbraham, 1 Ld. Raym., 668, Lord Holt saying: "It would be hard to spoil the defendant's demurrer." But is not a general demurrer too diabolical to have any claim upon modern emotion? Stated in the most partial terms, it merits would seem to stand thus: "Demurrer is the only legal devil always present and always ready. Every logical universe requires one such character. Some destructive work has to be done, and how can it be done if there is only resistance, no co-operation, not even sympathy?" But the spirit of modern procedure is altogether constructive and conservative, and though it gives the devil his due it takes care to restrict his dues as much as possible. Bleckley, C. J., in Ellison v. Railroad Co., Ga. Sup. Ct.

STOCKHOLDERS in The Law Reporter Company of Washington City will take notice that an election for the purpose of choosing nine trustees will be held at the office of the Company, 503 E St., N. W., on Monday, February 8, 1892; polls to be open from 1 to 3 o'clock p. m.

B. F. LEIGHTON, Secretary.

Release of Surety.

In *Otis v. Von Storch*, decided by the Supreme Court of Rhode Island in June, 1885, and recently reported, an interesting point in the law of principal and surety was passed upon as follows by the Court, per Durfee, C. J.:

"We think it well settled that, where the relation of principal and surety exists between two debtors, it is the duty of the creditor, if he knows of the relation, and has taken collateral security from the principal debtor, even though both are principals as to him, either to enforce the security himself, and apply the avails of it to the debt, or to preserve it for the surety, so that the surety paying the debt can have the benefit of it by way of subrogation; and that if the creditor, in violation of his duty, surrenders the security, without the consent of the surety, the latter will be discharged, either wholly or *pro tanto*, according to the value of the security so surrendered; and that, according to modern decisions, the surety is entitled to show the surrender by way of defense at law as well as in equity. *Baker v. Briggs*, 8 Pick., 122; *Guild v. Butler*, 127 Mass., 386; *Bank v. Colcord*, 15 N. H., 119; *Springer v. Toothaker*, 43 Me., 381; *Ferguson v. Turner*, 7 Mo., 497; *Kirkpatrick v. Howk*, 80 Ill., 122; *Rogers v. Trustees*, 46 Ill., 428; *Neff's Appeal*, 9 Watts & S., 36; *Everly v. Rice*, 20 Pa. St., 297; *Mayhew v. Crickett*, 2 Swanst., 185. It is also well settled that the fact that one debtor is surety for the other is no part of the contract, but merely a collateral fact, which, if it does not appear on the face of the obligation, may be proved, together with the fact of notice thereof to the creditor, by extrinsic evidence. *Guild v. Butler*, 127 Mass., 386; *Hubbard v. Gurney*, 64 N. Y., 457. It follows that the ruling of the court at *nisi prius* was erroneous in point of law, and that the defendant is entitled to a new trial if he has been injured by it."

Something of the Law of Domicile.

The question of one's domicile bears an important relation not alone in life but especially after death in respect to property rights. It is with relation to the latter period that this article will deal.

A domicile is the place where a person has a fixed and permanent home to which, whenever absent, he still has the intention of returning. A residence involves the question of personal presence in a fixed abode.

Every man must have a domicile somewhere; one will continue until another is created, but

the act and intention of removal must be united.

If a man leaves his domicile with the intention of returning, his residence does not alter his domicile notwithstanding the length of time that may elapse, but the intention to return must be clear and positive.

Although one's domicile and residence may differ, residence is a matter of great importance in determining domicile.

Residence will be presumed to be the place of domicile until facts establish the contrary.

The disposition of succession to, or distribution of the personal property of a decedent, wherever situated, will be made in accordance with the law of his actual domicile at the time of his death. Whether it be a case of voluntary transfer, of intestacy, or of testament this principle will apply equally.

The transfer of real property is controlled by the *lex rei sitae*, but the question of the capacity of a testator is governed by the law of his domicile.

In these days of quick travel and close commercial relations, frequent transfers of residence, without the intention to change one's domicile, are constantly occurring.

The following incidents which have fallen under the observation of the writer will serve in some degree to illustrate the questions which may arise after death in regard to one's domicile to affect property rights.

In 1835, M., a Scotchman, who had just completed an apprenticeship as a stone mason, came to the city of New York, and secured employment. For years he continued to work in the vicinity of New York, and during all the remaining period of his life kept a residence and apparently a domicile in this State. In 1879, he died in a small hotel in a western town, intestate, leaving a considerable amount of personal property. After considerable search, two first cousins upon the maternal side were found in Scotland, who, under the laws of the State of New York, appeared to be his sole next of kin. The news of the good fortune in store for them raised up a host of claimants, who, although more distinctly related, traced their line of descent upon the paternal side.

The law of Scotland, in the distribution of personal estates gives a preference to the paternal over the maternal line. These claimants sought to establish that when M. left Scotland to take up his residence in the United States—he had never abandoned for a moment his intention of returning. In support of this proposition they presented a large number of

letters, which had been written by the decedent to a lady, long since grown old, who lived in "Auld Reekie." In these he had constantly reiterated an intention ere long to return to the land of his birth. Had this intention been sustained his property must have been remitted to the Registrar General of Scotland for distribution under Scotch law.

An accident led to the discovery that soon after his arrival in this country he had declared his intentions to become a citizen in the Court of Common Pleas in the city of New York. In 1864 admiration for Lincoln and a desire to sustain him by his vote caused him to complete his naturalization in a western county of the State of New Jersey, and this fact in conjunction with his long residence here fixed his domicile in the State of New York; and at Christmas time, in 1884, the first two cousins upon the maternal side received a substantial Christmas gift.

Another case has but recently developed. A merchant in the city of New York whose domicile of birth and former residence had been in the Commonwealth of Pennsylvania, lived for many years in various hotels of the city of New York. He was unmarried and the degree of permanency of his residence was contested. He died intestate, leaving as his next of kin under the laws of the State of New York uncles and aunts only. By the laws of the Commonwealth of Pennsylvania, children of deceased uncles and aunts, who existed in this case, would have been entitled to take the shares of their deceased parents. In New York the rule is different. This situation at once produced a contest as to whether the decedent's domicile was in New York or Pennsylvania.

The intention of this article will have been accomplished if it shall serve to call attention to the importance of leaving no doubt to rest upon the question of one's domicile after death.

—William B. Davenport in *The Counselor*.

THE COURTS.

Supreme Court of the District of Columbia.

IN EQUITY—New Suits.

January 14, 1892.

13652. Louisa Muse v. Florida Pitts et al. To sell real estate. Com. sols., Birney & Birney.

January 15.

13653. Joseph H. Poore v. Norah Poore. For divorce. Com. sol., C. Carrington.

13654. B. L. Wheeler et al. v. Cornelia Bond et al. To sell lot 34 Redin's subsq. 182. Com. sol., Thos. P. Woodward.

January 16.

13655. W. O. Berry v. Emma S. Handy et al. To enforce mechanics' lien. Com. sol., Irving Williamson.

13656. Susan Fisher et al. v. Mary C. Appel et al. To sell lot C of original 17, Sq. 247. Com. sols., Morris & Hamilton; Defts. sol., Francis Pope.

13657. Marcellina Brookes v. R. A. Phillips et al. To restrain conveyance. Com. sols., Webb & Webb; Defts. sol., W. A. McKenney.

13658. W. R. Davis v. Catherine Davis. For divorce. Com. sol., S. H. Lewis.

January 18.

13659. Charlotte M. Swales v. S. E. Swales et al. To restrain deft. from possession. Com. sols., J. H. Smythe and E. M. Hewlett.

January 19.

13660. Wm. F. Benson v. Rebecca Benson. For divorce. Com. sol., Jno. M. Lawton.

AT LAW—New Suits.

January 11, 1892.

32509. Jno. B. Botineau v. F. W. Crosby. Damages, \$10,000. Plffs. attys., Ralston & Siddons.

32510. G. W. Z. Black v. Mary E. Wagely, admx. Account, \$297. Plffs. atty., J. J. Johnson.

32511. F. J. Heiberger v. Thos. Pitchlynn. Account, \$222.75. Plffs. atty., Wm. M. Steuart.

32512. Alex. M. Lowe, appellee v. Andrew B. Webb, appellant. Appeal. Defts. atty., A. M. Lowe.

32513. The Washington Brick Machine Co. (a corporation) v. Geo. O. Cook. Note and account, \$746.37. Plffs. atty., Wm. F. Mattingly.

32514. Walter J. Watson, surviving admr. of the estate of Marvin Eastwood, deceased, v. Thos. Reddington et al. Note, \$885. Plffs. atty., John Ridout.

January 12.

32515. Samuel Goodman et al. v. H. D. Barr. Note and account, \$456.56. Plffs. attys., Cole & Cole.

32516. J. H. Day v. C. A. McEuen et al. Note, \$300. Plffs. attys., Geo. K. French and H. P. Okie.

January 13.

32517. Lucy Y. Arrick v. H. D. Fry. Damages, \$3,000. Plffs. attys., Dean & Hindmarsh.

32518. W. H. Garner v. The W. & G. RR. Damages, \$10,000. Plffs. atty., Mason N. Richardson.

32519. The Wales Mfg. Co. v. The Peoples Carette Co. Account, \$150. Plffs. attys., Abert & Warner.

32520. Isaac S. Lyon v. James T. Bond, otherwise called Thomas Bond. Plea of title. Plffs. atty., P. P.; Defts. attys., E. M. Hewlett and E. H. Thomas.

32521. Wm. M. Stout et al. v. C. C. Loeffler. Note and account, \$1,290.79. Plffs. atty., F. T. Browning.

32522. Geo. C. Ellison v. The Edison General Electric Co. Account, \$1,000. Plffs. atty., A. W. Coleman.

January 14.

32523. J. E. Dyer v. Harry M. Gladmon. Account, \$317.48. Plffs. atty., W. S. Jackson.

32524. The Prudential Insurance Co. of America v. Newton C. Price. Judgment of Justice Mills, \$42.09.

January 15.

32525. Jno. F. Olmstead v. J. P. Horbach et al. Note, \$1,600. Pliffs. atty., Arthur S. Mattingly.

32526. Jno. A. Garver, assignee of Bateman & Co. v. The Executors of Preston B. Plumb, deceased. Account, \$13,000. Pliffs. atty., H. H. Wells.

32527. Jno. W. Walker v. W. B. Easton. Damages, \$20,000. Pliffs. attys., Lipscomb & Woodward.

January 16.

32528. Geo. M. Ramsey v. Jno. L. Kennedy et al. Damages, \$25,000. Pliffs. atty., Geo. K. French.

January 18.

32529. J. B. Olbey v. Nathan Sprague. N. Y. judgment, \$312.24. Pliffs. atty., W. A. Meloy.

January 19.

32530. Carrie A. Hamill v. J. H. O'Donnell. Note, \$320. Pliffs. atty., Jno. Ridout.

32531. J. C. Devine v. The W. & G. RR. Damages, \$10,000. Pliffs. atty., Samuel H. Lewis.

32532. J. E. Waugh et al. v. J. H. Sutherland. Note, \$100. Pliffs. atty., Wm. M. Lewin.

32533. J. C. A. Schieren et al. v. Edward Corbett. Account, \$141.07. Pliffs. atty., Thos. C. Taylor.

NOTICE.—The Corporators named in the Certificate of Incorporation of The Schillinger Curbing and Paving Company give notice that a meeting of Stockholders will be held at the Company's Office on January 26, 1892, to make by-laws, elect directors, and transact such other business as is necessary. L. P. Wright, John C. Poor, H. T. Woods, H. J. McLaughlin, H. H. Wainwright.

Rule of Court.

RULE 20. * * * * * Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

FIRST INSERTION.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of MARY HICKEY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 18th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of January, 1892.

MARGARET HICKEY,
8 Filmore Beall, Proctor.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business.

January 16th, 1892.

In the matter of the Estate of PATRICK CONNELLY, late of the District of Columbia, deceased. Application for the Probate of the last Will and Testament and for Letters of Administration, c.t.a.s, on the Estate of the said deceased, has this day been made by Catherine Connally.

All persons interested are hereby notified to appear in this Court on Friday, the 12th day of February, next, at 1 o'clock p. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration, c.t.a.s, on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.

3 Ernest L. Schmidt, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 20th day of January, 1892.

Bartow L. Walker and wife
vs. No. 12,629. Equity Docket 38.
Alverda Osburn et al.

On motion of the complainants, by Leo Simmons, their solicitor, it is ordered that the defendants, ALVERDA OSBURN, GRACE OSBURN, MASON OSBURN, DECATUR OSBURN and RICHARD OSBURN, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a decree for sale, to make partition of the property described in the bill in this cause, of which John Young died seized in Washington City.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
3 By L. P. Williams, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

January 16th, 1892.

In the matter of the Estate of CARL L. WINDHOLZ, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by William A. Rues.

All persons interested are hereby notified to appear in this Court on Friday, the 12th day of February next, at one (1) o'clock p. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER and Washington Post previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
3 No. 4773. Adm'n. Doc. 17. Chapin Brown, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 20th day of January, 1892.

J. H. Adriaans
vs. No. 13,586. Equity Docket 38.
Isaac S. Lyons et al.

On motion of the complainants, by Mr. O. H. Budlong his solicitor, it is ordered that the defendant, JOHN MEREDITH, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is a sale for purposes of partition of part of lot No. 26, section 8 of Barry Farm, in the District of Columbia.

This notice to be inserted once a week for each of three successive weeks in the Washington Law Reporter and the Evening Star.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
3 By L. P. Williams, Asst. Clerk.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphan's Court Business, Letters of Administration on the personal estate of JAMES McMULLIN, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of January, 1892.

GEORGE J. BOND,
3 James P. McCrelis, Proctor. 623 F St. n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of SHADRACH NUGENT, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of January, 1892.

GEO. W. LINKINS,
3 19th and H Sts. n. w.

SECOND INSERTION.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

George E. Emmons }
vs.
Moses Kelley et al. }

On motion of the complainant, by Messrs. Padgett & Forrest, his attorneys, it is this 9th day of January, 1892, ordered that the defendant, Charles E. Prentiss, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to substitute a trustee in the place and stead of Charles E. Prentiss, named as trustee in the certain deed of trust in the bill of complaint set out.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: J. R. Young, Clerk.
2 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

January 18th, 1892.

In the case of Frank M. Parker, Administrator of the estate of MARY E. PARKER, deceased, the Administrator or aforesaid has, with the approval of the Court, appointed Friday, the 12th day of February, A. D. 1892, at 11 o'clock a.m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: L. P. WRIGHT,
2 Register of Wills for the District of Columbia.
No. 4237. Ad. Doc. 16. William Twombly, Proctor.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters Testamentary on the personal estate of PATRICK J. MURPHY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 11th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hand this 11th day of January, 1892.

K. R. BOND.
CHARLES W. HANDY.
2 S. R. Bond, Proctor. 321 4½ St. n. w.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of MARY HELEN CHURCHILL BAIRD, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of January, 1892.

LILY HUNTER BAIRD,

2 R. E. Pairo, Proctor. 1445 Massachusetts Ave. n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

January 9th, 1892.

In the case of Henry Wise Garnett and Samuel P. Bell, Executors of ANNA M. C. SMITH, deceased, the Executors aforesaid have, with the approval of the Court, appointed Friday, the 12th day of February, A. D. 1892, at 11 o'clock a.m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and in the Evening Star previous to said day.

Test: L. P. WRIGHT,
2 Register of Wills for the District of Columbia.
No. 4198. Ad. Doc. 16. Randall Hagner, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

January 8th, 1892.

In the case of Genevieve T. Yager, Administratrix, c.t.a. of BERTRAND S. ASHBY, deceased, the Administratrix c.t.a. aforesaid has, with the approval of the Court, appointed Friday, the 12th day of February, A. D. 1892, at 11 o'clock a.m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administratrix c.t.a. will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and in the Evening Star, of Washington, D. C. previous to the said day.

Test: L. P. WRIGHT,
2 Register of Wills for the District of Columbia.
No. 3893. Ad. Doc. 15. Edwards & Barnard, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

January 9th, 1892.

In the case of Charles M. Matthews, Executor of ACHSAH C. DAVIS, deceased, the Executor aforesaid has, with the approval of the court, appointed Friday, the 8th day of February, A. D. 1892, at 1 o'clock p.m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the said Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: L. P. WRIGHT,
2 Register of Wills for the District of Columbia.
No. 4200. Ad. Doc. 16. Henry S. Matthews, Proctor.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

The 12th day of January, 1892.

Matthew Semple, and Robert A. Semple,
trading as Semple & Co., plaintiffs,
vs.
Job W. McAfee, John Q. McAfee, and
Harry C. McAfee, trading as McAfees &
Bres., defendants.

No. 32,818.
At Law. Docket —

On motion of the plaintiff, by Messrs. Gordon & Gordon, their solicitors, it is ordered that the defendants, JOB W. McAFFEE, JOHN Q. McAFFEE, and HARRY C. McAFFEE, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to condemn certain credits of defendant's heretofore attached in this cause.

By the Court. M. V. MONTGOMERY, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
By H. W. Hodges, Asst. Clerk.

THIRD INSERTION.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of GEORGE WHITE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 30th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of December, 1891.
JOHN C. HEALD,
900 F St. n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

January 2, 1892.

In the matter of the Estate of VIRGINIA ROULOT, late of the City of Washington, D. C., deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Jacob Lefo, of the City of Washington, D. C.

All persons interested are hereby notified to appear in this Court on the 29th day of January, next, at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter, and Evening Star, previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.

1 W. K. Duhamel, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

Christine Cecilia Coleman,
and Francis E. Richards
vs.

Alexander Webster Richards.

Joseph J. Darlington and W. Woodville Flemming, the trustees in the above entitled cause, having reported to the Court that they have sold the real estate in these proceedings described, being original lot numbered six (6) in square numbered seven hundred and forty-two, (742), the north-western portion of said lot to Christine Cecilia Coleman for eighteen hundred and twenty-five (\$1,825) dollars; the south-west portion to Francis E. Richards for eighteen hundred and twenty-five (\$1,825) dollars, and the eastern portion of said lot six (6) to Jefferson B. Cralle for two thousand and fifty-three (\$2,053) dollars, making a total of five thousand seven hundred and fifty-three (\$5,753) dollars: It is by the Court, this 4th day of January, 1892, ordered that said sale be ratified and confirmed unless cause be shown on or before thirty days after the date thereof.

Provided a copy of this order be published in the Washington Law Reporter for three successive weeks prior to the expiration of said thirty days.

A. B. HAGNER, Justice.
True copy. Test: J. R. Young, Clerk.
By M. A. Clancy, Asst. Clerk.

[Filed January 4, 1892. J. R. Young, Clerk.]

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of JOHN HOOVER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 31st day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 31st day of December, 1891.

ARTHUR A. BIRNEY,
468 Louisiana Ave.

1

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of January, 1892.

J. Henry Hentz Sr. et al. } vs.
Alice K. Seligson et al. }

No. 13,505. Docket 33.

On motion of the complainants by Thomas M. Fields, their solicitor, it is ordered that the respondents, THE UNITED SECURITY LIFE INSURANCE AND TRUST COMPANY of Pennsylvania, and CONSTANTINE H. WILLIAMSON, trustee, cause their appearance to be entered herein on or before the first rule-day, occurring forty days after this day; otherwise this cause will be proceeded with as in case of default.

The object of this suit is to administer the estate of Herman A. Seligson, deceased, and to sell lot 166 and part of lot 168 in Beall's addition to Georgetown; subdivision lot 35 in Square 823, and land in Johnson County, Kentucky, to pay the debts of said deceased.

A summons duly issued to the said respondents was returned "not to be found," on December 1, 1891.

By the Court. A. B. HAGNER, Asso. Justice.
A true copy. Test: J. R. Young, Clerk.

1 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of January, 1892.

J. Henry Hentz, Sr. et al. } vs.
Alice K. Seligson et al. }

No. 13,506. Docket 33.

On motion of the complainants, by Thomas M. Fields, their solicitor, it is ordered that the respondents, THE UNITED SECURITY LIFE INSURANCE AND TRUST COMPANY of Pennsylvania, and CONSTANTINE H. WILLIAMSON, trustee, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise this cause will be proceeded with as in case of default.

The object of this suit is to administer the estate of Herman A. Seligson, deceased, and to sell lot 100 in Groff's subdivision of square 190, to pay the debts of said deceased.

A summons duly issued to the said respondents was returned "not to be found," on December 1, 1891.

By the Court. A. B. HAGNER.
A true copy. Test: J. R. Young, Clerk.

1 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of January, 1892.

The Washington Loan and Trust Co. } vs.
Thomas V. Hammond et al. }

No. 13,583. Eq. Doc. 33.

On motion of the plaintiff, by Mr. John B. Larner, its solicitor, it is ordered that the defendants, WILLIAM McCALLUM, ANGES McCALLUM, and the unknown heirs of ANDREW McCALLUM, deceased, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to declare a certain deed in fee simple to part of lot 37 in Susan E. Cunningham's subdivision of lots in square 99, Washington, D. C., from the said defendant Hammond to said Andrew McCallum, deceased, a mortgage, and for sale of said property for payment thereof.

Said notice to be published once a week for each of four successive weeks in The Washington Law Reporter and The Evening Star and New York Herald.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
1—4t. By M. A. Clancy, Asst. Clerk.

[Filed January 6, 1892. J. R. Young, Clerk.]

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WASHINGTON, D. C., - - - JANUARY 28, 1892

A CASE somewhat out of the usual run in the courts and yet not of unfrequent occurrence among business men is that of *Shaffner v. Ehrman* recently decided by the Supreme Court of Illinois, where it was held that a banker who, by a mistake of his book-keeper, refuses to pay the check of a depositor engaged in trade and having sufficient funds on deposit to meet the check, is liable in substantial but temperate damages to such depositor even though there be no evidence of special damage or of actual malice. The facts of the case were briefly as follows: Defendants (plaintiff in error) were bankers in the city of Chicago; plaintiffs, who were wholesale and retail liquor dealers in that city, had for more than a year been depositing money in defendant's bank and from time to time drew checks against their deposit. On the 4th of May, 1888, the book-keeper of the bank by mistake charged to plaintiffs two checks amounting to \$125 and drawn by Ehrman & Co., whose accounts on the bank's books stood next above that of said firm. By this mistake, apparently growing out of the similarity of names, plaintiff's deposit was shown to be \$125 less than it in fact was. On the 28th of May, plaintiffs drew their check for \$249 payable to the order of one of their customers. This check was duly presented on the same day through the clearing house and payment refused "for want of funds." It was thereupon returned to the payee. The plaintiffs then brought suit to recover

damages alleged to have been sustained by refusal to pay said check and a verdict and judgment was rendered for \$450 and costs of suit. The case turned upon the question whether plaintiffs failing to prove actual or substantial damages or that defendant acted from malicious motives could recover more than nominal damages. Upon this point the court said: "Authorities are not numerous on the question, but they seem to be uniformly to the effect that more than mere nominal damages are recoverable." After citing authorities sustaining the principle announced in *Wood's Mayne on Damages* (1st Am. Ed., Sec. 8, p. 12) that "when there may be an injury existing at present, though unascertainable, or to arise hereafter, and for which no further action could be brought, substantial damages may be given at once," the court proceeds:

It is well understood that in an action of slander by a person for the speaking of slanderous words of him in the way of his trade, the fact that he is a trader takes the place of special damages. To return a check marked 'refused for want of funds' to the holder especially through a clearing house, certainly tends to bring the drawer of that check into disrepute as a person engaged in mercantile business; and it needs no argument to show that a single refusal of that kind might often and frequently does, bring ruin upon a business man, and yet it is no more possible in either case to prove special or actual damages than it is for one [falsely] charged with the commission of a crime to show specifically in what manner he has been injured. It is said, however, that in an action of slander the recovery is had because of slanderous words spoken maliciously, and here it is said there was no malice whatever. While it is true that in slander, malice is the gist of the action, yet the term "malice" is always used in such cases in a legal sense. As was said by Dayley, J., in *Broumage v. Prosser*, 4 B. & C., 247, which was an action for slander of a bank, the words being in substance that it had stopped payment. "Malice in common acceptation means ill will against a person but in its general sense it means a wrongful act done intentionally without just cause or excuse. And if I traduce a man whether I know him or not, and whether I intend to do him an injury

or not, I apprehend the law considers it as done of malice, because it is wrongful and intentional. It equally works an injury whether I mean to produce an injury or not; and if I had no legal excuse for the slander why is he not to have a remedy against me for the injury it produces?" So here the bank wrongfully refused to pay the checks of the appellee; that refusal was intentional and without just excuse. There was therefore all the elements of legal malice, although there might have been no intention to injure the appellee. See Starkey on Slander, Vol. 1, page 101; Commonwealth v. Bowen, 9 Met., 412. We can not say that the damages allowed in this case were excessive under all the circumstances proven.

Other authorities upon the question discussed will be found as follows, Rollins v. Stewart 14 Com. Bench, 595; Prehn v. Bank of Liverpool, 5 L. R. Exchq., 92; Patterson v. Marine Bank, 130 Penn., 449, and cases there cited.

PARTNERSHIP—Non-trading—Bills and Notes—A partnership formed for the purpose of conducting a theatre is a non-trading partnership, in respect to the presumption that one of the partners has no authority to give a firm note. Pease v. Cole, 22 Atl. Rep., 580 (Conn.).

REAL PROPERTY.—A devise to A "for his life and the life of his heir" gives A an estate for two lives, the second life not being capable of identification, however, until the death of A. In re Amos (1891) 3 Ch., 159.

REAL PROPERTY—Tenancy by Entirety—Effect of Divorce—On the termination, by an absolute divorce, of a tenancy by entirety created by a conveyance to husband and wife, the grantees hold as tenants in common without survivorship. Steltz v. Shreck, 28 N. E. Rep., 510 (N. Y.).

Contemporaneous Oral Agreement.

The opinion of the Supreme Court of the United States in Seitz v. The Brewers' Refrigerating Machine Company, is of great interest to the profession, as it contains a new formulation of the scope of the rule that parol evidence is incompetent to contradict or vary a written instrument. The action was brought upon a written contract, by the defendant in error to sell and by the plaintiff in error to purchase, a refrigerating machine at a price named, payable in certain installments. A machine was accordingly delivered and set up in the place of

business of said plaintiff, and his main defense to the payment of the contract price was founded on an alleged contemporaneous verbal warranty of the capabilities of said machine, made by the vendor as an inducement to its purchase.

It was claimed on the trial that the owner of the brewery entered into the contract upon the representation of agents of the machine company that the No. 2 machine referred to would cool and was capable of cooling a space of 150,000 cubic feet of air continuously to a temperature in the neighborhood of 40 degrees Fahrenheit; that the contract would not have been signed without such warranty; and that the machine had not proved capable of performing the work as represented and was, therefore, worthless to the brewer. Independently of any possible conflict between the courts of the United States and New York as to the validity of a verbal warranty, there could be no doubt of the soundness of the result of the present decision considering all the facts. As the court remarks in closing:

"The conduct of plaintiff in error in demanding, two days after the contract was executed, a written guaranty that the machine company would cool his building to 3½ degrees Reaumer, or 40 degrees Fahrenheit, and keep it at that all the time, and in acquiescing in the company's refusal to give the guaranty for reasons stated, and in thereupon afterwards ordering the company to go on with the work as exhibited in the correspondence between the parties seems to us to justify no other conclusion than that reached by the verdict."

But the appeal is not decided solely on the ground that the purchaser had waived any warranty that may have been given. The court goes further and holds that a verbal warranty made contemporaneously with the execution of the writing, and as part of the same transaction to which the writing relates, would be void and unenforceable. Upon this point the language of the opinion is follows:

"Undoubtedly the existence of a separate oral agreement as to any matter on which a written contract is silent and which is not inconsistent with its terms, may be proven by parol, if under the circumstances of the particular case it may properly be inferred that the parties did not intend the written paper to be a complete and final statement of the whole of the transaction between them. But such an agreement must not only be collateral, but must relate to a subject distinct from that to which the written contract applies—that is, it

must not be so closely connected with the principal transaction as to form part and parcel of it. And when the writing itself upon its face is couched in such terms as import a complete legal obligation without any uncertainty as to the object or extent of the agreement, it is conclusively presumed that the whole engagement of the parties, and the extent and manner of their undertaking, was reduced to writing. *Greenl. Ev., Sec. 275.*"

The court cites *Wilson v. Deen*, 74 N. Y., 531, without referring to the later case of *Chapin v. Dobson*, 78 N. Y., 74, in which *Wilson v. Deen* is distinguished. *Chapin v. Dobson* was much more closely analogous to the present case, on the facts, than *Wilson v. Deen*. In *Chapin v. Dobson* the action was brought by the vendors named in a written contract to sell and purchase machines. The vendee, by way of defense, alleged, and was permitted to prove, a parol agreement, made at the same time, and in consideration of which he executed the writing, by which plaintiffs guaranteed "that the machine should be so made that they would do defendant's work satisfactorily," and if they did not, plaintiff would take them back again. Evidence was also given showing a breach of said guaranty. *Chapin v. Dobson* and the present case in the Federal Court had even the element in common that a specific and designated kind of machine was the subject of the contract. The Court of Appeals, however, held that the rule inhibiting the admission of parol evidence to contradict or vary a writing had not been violated, and stated as a controlling principle, that where the original contract was verbal and entire, and a part only was reduced to writing, the parol portions of the contract may be proved by parol.

Chapin v. Dobson has been often cited and distinguished in subsequent New York cases, and its application was expressly limited in *Eighmie v. Taylor*, 98 N. Y., 288. Commenting upon *Chapin v. Dobson*, the court say in *Eighmie v. Taylor*:

"Some of the exceptions to the rule which forbids parol evidence varying the terms of a written contract have been recently considered in this court. *Chapin v. Dobson*, 78 N. Y., 74. It was then said that the rule does not apply where the original contract was verbal and entire, and a part only was reduced to writing, and that it has no application to collateral undertakings. What was meant by the first of these two exceptions is apparent from the reasoning of the opinion of the authorities brought to its support. It was said of the instrument then in

question that there was nothing upon its face to show that it was intended to express the whole contract between the parties, the inference being, as was declared in an earlier case, that where a contract does indicate such intention and design, and is one consummated by the writing, the presumption of law arises that the written instrument contains the whole of the agreement and that where there is such formal contract of bargain and sale executed in writing there can be no question but that the parties intended the writing as a repository of the agreement itself. *Filkins v. Whyland*, 24 N. Y., 388. The first exception to the general rule is capable, if too broadly and loosely interpreted, of working the utter destruction of the rule. 1 *Greenl. on Ev.* Sec. 284, a.

"For if we may go outside of the instrument to prove that there was a stipulation not contained in it, and so that only part of the contract was put in writing, and then, because of that fact, enforce the oral stipulation, there will be little of value left in the rule itself. The writings which are protected from the effect of contemporaneous oral stipulations are those containing the terms of the contract between the parties, and designed to be the repository and evidence of their final intentions. If upon inspection and study of the writing read it may be, in the light of surrounding circumstances, in order to its proper understanding and interpretation, it appears to contain the engagements of parties, and to define the object and measure the extent of such engagement, it constitutes the contract between them, and is presumed to contain the whole of that contract."

We presume such "inspection and study of the writing" is to be done by the court, so that this language would seem to mean that the court is to determine as matter of law whether a given writing contains the whole contract. This is in harmony with the language of Chief Justice Fuller:

"Whether the written contract fully expressed the terms of the agreement was a question for the court, and since it was in this instance complete and perfect on its face without ambiguity, and embracing the whole subject matter, it obviously could not be determined to be less comprehensive than it was."

In *Chapin v. Dobson* the writing was by no means as formal and complete on its face as the one involved in the present case. It reads rather like a concise memorandum than a deliberate and perfect contract, and as the trial in *Chapin v. Dobson* was before a referee who passed upon questions both of law and fact, the

actual result there reached, as interpreted by *Eighmie v. Taylor*, is not necessarily antagonistic to the law announced by the Supreme Court of the United States.

The very recent case of *Engelhorn v. Beltlinger* in the Court of Appeals, Second Division, 122, N. Y., 76, disclosed a state of facts quite similar to those involved in *Chapin v. Dobson*, and *Seitz v. Brewers' Refrigerating Company*. It was not a case of contemporaneous verbal warranty of quality, but of a contemporaneous agreement as to the price at which the vendors would continue to sell merchandise of the same kind sold to the vendees, which the vendees claimed was a condition of the purchase made by themselves. The court held that parol evidence of such alleged condition was inadmissible to add to the written contract of sale. In this case the writing does not appear any more elaborate and complete on its face than the one shown in *Chapin v. Dobson*, and moreover, the court cited with approval, as the Federal Supreme Court has now done, the case of *Wilson v. Deen*, 74 N. Y., 631. Taking, therefore, the latest utterance by each tribunal, it would seem that the Supreme Court of the United States and the New York Court of Appeals are substantially in accord on the subject.—*N. Y. Law Journal*.

Supreme Court of the District of Columbia. IN GENERAL TERM.

CYNTHIA H. QUACKENBUSH ET AL.

v.

THE DISTRICT OF COLUMBIA.

At Law. No. 29,920. Decided December 21, 1891.

JENNER v. SAME.

In Equity. No. 13,261. Decided December 21, 1891.

1. The provision with respect to land owners under Section 258, R. S. D. C., providing for the opening or widening of roads, are not complied with by a notice which merely announces that the road is to be so altered as to be of twice its former width, and that a plat showing the proposed alteration has been deposited in a certain office; the notice must be of such a character as to inform the owner that it is his land which is about to be taken for public use, and if he is not so informed the proceeding is void.
2. Where objection is made and damages claimed by any owner of land about to be taken under the Statute for the purposes of a roadway, the duty of the Commissioners is to summon a jury to ascertain the damages not only to the objecting owner but to all other owners whose land is to be taken.
3. Where land is to be taken *in invitum* for public use, the assent of the owner is not to be implied or his rights to be considered waived by anything less than an affirmative act, his mere default in failing to appear and object to the proceedings is not to be regarded as a dedication or gift of his land to the public.
4. The argument *ab inconvenienti* is not to be applied in favor of the public against the citizen whose property it is proposed to take without his consent, even though a beneficial statute will be virtually nullified by failing to apply it.

THESE two cases were considered together. The first was a hearing in General Term in the first instance of a return to a writ of certiorari to review a land condemnation proceeding by the authorities of the District. The second was an appeal from a decree enjoining the District from laying out upon complainant's land a proposed highway for public use. In the first case the proceedings were vacated and in the second the decree was affirmed.

THE FACTS in each case are stated in the opinion.

Messrs. BIRNEY & BIRNEY and SAMUEL MADDOX for plaintiffs.

Messrs. HAZLETON and THOMAS for defendant.

Mr. Justice JAMES delivered the opinion of the Court:

The first of these cases is a writ of certiorari for review of the proceedings of the authorities of the District in widening Columbia Road from Boundary street to 19th street extended.

The petition, originally filed by Stephen P. Quackenbush, ancestor of the present party, states the following case:

In the spring of 1887, the Commissioners of this District published an advertisement calling upon all persons who might have objections to a proposed alteration of the road to present them. Quackenbush appeared and claimed damages. The marshal of this District summoned a jury and served notice on him that it would meet on the 12th of May, 1887. On that day other owners of land adjoining Columbia Road filed a bill in equity asking that the Commissioners be enjoined from taking further action for such widening under the then pending proceedings, and an injunction *pendente lite* was granted. That injunction remains in force, the case not having yet come to hearing. But, notwithstanding the petitioner's pending objection and claim, and that injunction, the Commissioners and the marshal proceeded in October, 1888, to widen Columbia Road as originally designed, and a jury assessed damages therefor in favor of Mrs. Stoddart, Mr. Phelps, and the heirs of Blake. No notice of the time and place of meeting of the jury was sent to the petitioner by the marshal, and no damages were assessed in his favor; nor did he have any knowledge of any advertisement of notice, or of the meeting of this second jury, until after the verdict. The Commissioners have taken possession of, and opened to public travel, as part of a public highway, a strip of petitioner's land 16 feet 5 inches wide, which is worth \$3,000.

The return is to the following effect: A new

advertisement of notice was published in these words: "Office of the Commissioners District of Columbia, Washington, July 23rd, 1888. Deeming it conducive to the public interest to widen the Columbia Road from Boundary St. to 19th St. extended from thirty-three feet to sixty-six feet, the Commissioners of the District of Columbia have had the route surveyed and a plat thereof prepared and filed in their office. In compliance with the requirement of law notice is hereby given of the proposed widening of the highway aforesaid, and all persons who have objections to present thereto are called upon to attend at this office, at 12 o'clock m., on Tuesday, the 14th day of August, 1888, at which time the Commissioners will give hearing to all persons in interest." This was signed by the several Commissioners."

Objections and claims for damages were presented by several persons, and thereupon the Commissioners directed the marshal "to summon a jury *in the case of the objecting owners.*" The jury were accordingly sworn only to assess damages for lands belonging to Mrs. Stoddart, Mr. Phelps and the Blake heirs, and damages were in fact assessed only to those three owners. Thereupon the Commissioners at once, and without any inquiry of damages as to the petitioner or any other owners than those mentioned, declared Columbia Road, as thus widened, to be a public road and opened as a highway.

We are of opinion that the proceedings in this case were in several respects illegal. In the first place, notice of the proposed alterations of Columbia Road was not given by the advertisement shown in the return. In the next place, the jury did not consider and act upon the case of every owner whose property was taken in widening the road, as they were plainly required by the statute to do.

These conclusions are based upon the following provisions of the Revised Statutes of this District: "Sec. 253. The proper authorities shall cause notice to be given, by advertisement twice a week for three weeks, of the proposed opening of a new road, or of the alteration of an existing one, calling upon all persons who may have any objections thereto, to present them to such authorities at their next regular meeting, when, if any objections are made, such objections shall be heard.

"Sec. 255. If no objection to opening or altering a road is made by the owners of the land through which it must pass, after such notice, it shall be taken for granted that no damages are or will be claimed, and the road may be recorded

and opened, and shall then be a public road or highway.

"Sec. 257. If any owner of land shall object and claim damages, and the amount cannot be agreed upon, the proper authorities shall direct the marshal of the District to summon a jury of seven judicious, disinterested men, not related to any party interested, to be and appear on the premises, on a day specified, to assess the damages, if any, which each owner of land through which the road is to pass may sustain by reason thereof.

"Sec. 258. It shall be the duty of the marshal, upon receiving the order mentioned in the preceding section, to give the owners not less than ten days' notice of the time and place of the meeting of the jury to assess the damages."

"Sec. 260. The marshal shall summon the jury and administer an oath or affirmation to them that they will, without favor or partiality to any one, to the best of their judgment, decide what damages, if any, each owner may sustain by reason of running the road through his premises."

We have to consider, first, the sufficiency of the notice.

The provisions of this statute are to be read in the light of the constitutional provision which forbids even the whole nation to take for its own use the property of an individual without just compensation for it. His right to retain that property, or to have its equivalent, is thus surrounded with an inviolable character. A statute which should disregard that right would itself be a nullity, and no statute is to be construed to intend any jeopardy or diminution of it unless such intention be too plain to be ignored. On the other hand, the legislature is to be understood to require the most complete observance of provisions for an opportunity to secure just compensation, especially because they are made for the protection of the individual owner in a proceeding which is, in contemplation of law, wholly *in invitum*. From this point of view it is plain that the statute before us intends the advertised notice to be effective as a protective warning; and, therefore, intends that it shall be such a notice as shall inform the owner of the land that it is his land that is about to be taken for public use. Clearly, a notice which merely announces that Columbia Road is to be so altered as to be of twice its former width, and that a plat showing the proposed alteration—in other words, showing whose land is to be taken—has been deposited in a certain office, does not comply with this requirement. The owner is not in-

formed by the notice itself whether the additional width is to be taken wholly from lands bordering on one side of the road, or partly from lands bordering on each side. From the mere reading of such a notice a bordering owner could not learn that the proposed alteration would touch his land. And here we desire to lay emphasis on this intention of the statute that the notice itself shall convey to the land owner the information and the warning to which he is entitled. A statute which proposes to operate *in invitum* does not intend to charge him with any duty to aid such a proceeding by going about to inquire whether it is his land the authorities were talking about; in other words, with a duty to *give himself* notice. But this active duty is precisely what the form adopted by the Commissioners proposed to shift onto his shoulders. In our opinion such a method of giving notice would be likely sometimes to catch a land owner napping, and, however innocent its intent might be, would have the actual effect of a device to avoid his expectation of just compensation by taking advantage of his inertia or of his want of training in affairs. Both results are abhorrent to the principle which inspired the Fifth Amendment of the Constitution.

We are aware that a less exacting construction of the duty to give the private owner notice has been adopted by some courts; and have only to say that we decline to accept those decisions as a guide, inasmuch as they seem to us to have overlooked a controlling principle.

We have next to consider the limitation of damages to the objecting owners.

This statute contemplates two courses of action; one in which the authorities may at once declare a road to be open, without the intervention of an assessing jury; the other in which they cannot expropriate the owner until a jury shall have ascertained a just compensation for his land. Section 255 provides, that when "no objection to opening or altering a road is made by the owners of the land through which it must pass, after such notice;" that is to say, after the kind of notice which the law actually required, the road might at once be declared open. But the next section provides that "if any owner of land shall object and claim damages;" in other words, if *any* owner shall make occasion for a jury, then a jury shall be summoned. The question is, what is the function of the jury in that case? For what purpose does the statute say it is there when it is once required to intervene? The literal direction of the act is that it shall, in case of a claim by *any* owner, be summoned "to

assess the damages, if any, which *each* owner of land through which the road is to pass may sustain by reason thereof." The manifest spirit of this provision is, that when once the process of ascertaining just compensation has begun, the separate power of the Commissioners to declare the road open, for any purpose or to any extent, without ascertainment of damages by a jury is at an end, and that all owners shall be put on an equality and treated alike. And to that effect is the letter of the law; the jury is directed by it, upon a claim for damages by any owner, to assess the damages sustained by "each owner of land through which the road is to pass."

It is urged, on the part of the authorities, that this provision must be read as if it had said "objecting owners;" and nothing less than such an alteration of its language would sustain their action in this case. No such qualification is expressed in the statute, and we see nothing in the context, or in the constitution, that would justify us in putting it there.

It is manifest that the contention that the Commissioners are authorized to direct the jury to ignore particular owners who do not appear and claim damages, must stand upon one or the other of two theories; namely, upon the theory that their failure to appear amounts to an assent to the taking without compensation, or upon the theory that an owner loses his claim by default. Assent is not implied in a proceeding to take *in invitum*, and this proceeding was declared to be of that character by the very act of advertising notice, and still more distinctly by the terms of that notice. And as to the kind of conduct which should be held to manifest consent, it is not to be supposed, in view of the spirit of the constitutional guaranty of the private right, that the legislature intended that it should be considered waived by anything less than an affirmative act of abandonment, or by an act which amounted to a voluntary gift. Moreover, this very statute indicates the manner of consenting which shall constitute such a donation. Section 256 provides that: "The notice required to be given by section 253 need not be given when all the parties interested are agreed, and all roads laid out under such agreement, without notice being given, are lawful roads." What shall constitute a giving or dedication of land in such a case is not open to question. Whether the agreement must be in writing or may be in parol and proven by acts in pais, the giving or dedication must be by affirmative act and not by submission to the acts of another. It can hardly be supposed that another part of the same statute intended

that mere non-action in a proceeding *in invitum* should be construed to be an affirmative gift or dedication. Finally, as to the theory of default, we cannot suppose that the legislature intended that this constitutional right of an individual owner to have just compensation when his property is taken for public use, should be subjected to the technical rules of common law pleading in a common law action. It might be that the right to compensation would be lost by intentional abandonment of claim, but that it should be forfeited by mere default is a conception which is inconsistent with the solemnity with which that right has been guaranteed.

We are of opinion that the proceedings by which the property of the petitioners has been taken were illegal, and that they must be vacated.

The second case is a bill for an injunction restraining the defendant from laying out upon complainant's land a proposed highway for public use. The case stated therein is as follows:

The complainant owns lots 56 and 57 in a tract of land known as McLaughlin's Subdivision of Prospect Hill, containing each 7,470 square feet of land, as recorded in the surveyor's office. When said subdivision was admitted to record a street fifty-nine feet and fifty-nine hundredths wide, called Gales avenue, was dedicated to the public as a common highway, and as such has ever since been used by the public. Some time in the year 1890 there was filed in the office of the Commissioners of the District a request asking for the opening of T street north, between Lincoln avenue and Second street northeast, across the said lots, and in October of the same year the Commissioners caused an advertisement, in the following words, to be published in *The Washington Post*: "Office of the Commissioners District of Columbia; Washington, October 1, 1890. Deeming it conducive to the public interest to open T street from Lincoln avenue to Second street northeast, the Commissioners of the District of Columbia have had the route surveyed and a plat thereof prepared and filed in this office. In compliance with the requirements of law notice is hereby given of the proposed opening of the highway aforesaid, and that all persons who have objections thereto to present are called upon to attend at this office, at 2 o'clock p. m., on Tuesday, the 28th day of October, 1890, at which time the Commissioners will give hearing to all persons in interest. By order of the Commissioners of the District of Columbia. John W.

Douglass, J. W. Ross, H. M. Robert, Comrs. D. C."

On the 19th of November, 1890, one Montgomery, an owner of land on the line of said extension, filed an objection, and thereupon the Commissioners directed the marshal to summon a jury to assess damages. The marshal notified only three of the thirty owners through whose land the proposed extension would pass, to appear before the jury, and the jury assessed damages only to the three persons notified. The Commissioners, being dissatisfied with this award, caused a second jury to be summoned, and a second assessment was made; whereupon the extension was declared to be opened as a public road.

These averments are admitted to be true by the answer of the Commissioners.

As this case was heard with *Quackenbush v. The District*, and the same questions are presented in both, we need not repeat here the argument which governed our conclusions in that case. It is worth while, however, to note an argument *ab inconvenienti* which is stated in the form of an averment in the answer. It is there alleged that, if the construction insisted on by the complainant, and now conceded by the court, should prevail, the statute itself would be virtually nullified.

We can only understand this to be a suggestion that the public cannot afford to take land for streets and roads on the terms which would result from that construction of the law; and that the alleged practice of the last quarter of a century should be sustained because it works an economy in the taking of private property for public use. Such a suggestion implies that this economy is to be accomplished by an early cutting off of claims, in case an owner, who might not be willing, and might not intend, to give his property without compensation, should be slow in demanding it.

We suppose there is no public policy which requires the executive, much less the judicial authorities, to be astute to diminish the chances of a demonstrable private right; especially of a right which this people have been so careful to guaranty by their fundamental law. The rights of the individual are at all times, even with the best protection, in jeopardy enough from combined private interests; and even public power has a tendency to disregard them. It was just because of the known readiness of communities to satisfy their convenience at the cost of the individual, that this guaranty was provided. We are not left to infer its meaning and temper from this single line of the fifth

amendment. An intense estimate of private right had been a tradition of the race from a time even beyond *Magna Charta*. Blackstone, who well knew the traditions of Englishmen, said, a quarter of a century before this amendment was made :

"So great, moreover, is the regard of the law for private property, that it will not authorize the least violation of it; no, not even for the general good of the whole community. If a new road, for instance, were to be made through the grounds of a private person, it might perhaps be extensively beneficial to the public; but the law permits no man, or set of men, to do this without consent of the owner of the land. In vain may it be urged that the good of the individual ought to yield to that of the community, for it would be dangerous to allow any private man, or even any public tribunal, to be judge of this common good, and to decide whether it be expedient or no. *Besides, the public good is in nothing more essentially interested than in the protection of every individual's private rights, as modified by the municipal law.* In this and similar cases the legislature alone can, and indeed frequently does, interpose, and compel the individual to acquiesce. But how does it interpose and compel? Not by absolutely stripping the subject of his property in an arbitrary manner, but by giving him a full indemnification and equivalent for the injury thereby sustained. *The public is now considered as an individual, treating with an individual for an exchange.* All that the legislature does is to oblige the owner to alienate his possessions for a reasonable price; and even this is an exertion of power, which the legislature indulges with caution, and which nothing but the legislature can perform." 1 Bl. Com., 139.

It is not to be supposed that when they embodied their ancient tradition in their constitution, this people intended to alter the relations of private right and public benefit. It was not alone the former that they considered. As they had said in the preamble to that instrument, they were engaged in providing for "the general welfare," and this protection of private property was understood by them to be one of the means of promoting that welfare. They knew, as well as Blackstone did, that "the public good is in nothing more interested than in the protection of every individual's private rights, as modified by the municipal law;" and in thus securing "every individual's private rights," they substantially affirmed that the general welfare and true public policy requires that communities shall make compensation for what they take, and that they shall not evade that obligation by any construction.

The decree of injunction is affirmed.

Circuit Court of Missouri.

ATKINSON, TOPEKA & SANTA FE RR. CO.
v.
WILSON.

1. **MASTER AND SERVANT—Injuries to Servant—Defective Tracks.**—While plaintiff's intestate and other railroad hands, engaged in reconstructing a piece of wrecked track, were removing wreckage by means of a derrick-car, the derrick unexpectedly swung to the north, and upset the car, and killed the intestate. The ground at the place of the accident was softened by prolonged rains, and there was evidence that immediately after the accident the north rail under the car was found to be several inches lower than the south rail, although there was no curve in the track, and that the consequent slant was sufficient to cause the derrick to swing as it did. Some witnesses testified that only three ties were laid under each rail: others that there were ten or twelve. Held, that such a slant of the track, whether due to careless construction or to the sinking of the north rail after it was laid, is such a defect as constitutes negligence on the part of the railroad company, and the question of its existence was properly submitted to the jury.
2. **SAME—Fellow Servants—Vice Principal.**—The railroad company cannot escape liability for such negligence on the ground that it was the negligence of the intestate's fellow servants, when the company's roadmaster was present, and in charge of the whole work of reconstruction.
3. **DEATH BY WRONGFUL ACT—Action by Widow—Evidence—Age of Offspring.**—In an action against a railroad company, brought under Rev. Stat. Missouri, Sec. 4425 et seq., by a widow for the death of her husband while in its employ, evidence of the ages of the children of the marriage is admissible; for on his death the widow becomes responsible for the care of the children. *Tetherow v. Rwy. Co.*, 98 Mo., 84, 11 S. W. Rep., 310, followed.
4. **SAME—Measure of Damages—Loss of Husband's Society.**—But in such an action under that statute, the loss of companionship or society of the husband is not an element of damages, and it is error to instruct that the jury may consider such loss in estimating the damages. *Schaub v. Rwy. Co. (Mo. Sup.),* S. W. Rep., 924, followed.

Decided October, 1891.

IN ERROR to the Circuit Court of the United States for the eastern judicial district of Missouri.

ACTION by Mary A. Wilson against the Atchison, Topeka & Santa Fé Railroad Company for the death of her husband, a section hand in defendant's employ. There was judgment for plaintiff, and defendant brings error.

Present, Justices CALDWELL, NELSON, and HALLETT.

Mr. Justice HALLETT delivered the opinion of the Court:

In the month of April, 1890, a freight train was wrecked at or near Salt River, in Macon County, Mo., on a line of railroad owned and operated by the plaintiff in error. In the evening of the same day a large force of men was assembled at the wreck for the purpose of clearing the track and repairing it as speedily as

possible. These men were employes of the company, of various occupations, collected from the line of the road. It was not the practice of the company to keep men for the business of removing wrecks, but in such an emergency men were called from all branches of the service as occasion might demand. For the most part they were sectionmen, and with them came the division superintendent of the road, William E. Costello, the roadmaster, Charles A. Lehman, and the trainmaster, William B. Scott. It is not clear whether any any of these officers had general supervision of the entire force and of all the work to be done at that time and place; and, in the view we take of the case, it is not important to determine that question. It is enough to note the fact, clearly established by the evidence, that in repairing the track, or reconstructing it in a manner to be presently noticed, the work was under the supervision of the roadmaster, Charles A. Lehman, who was present and attending to that duty. Circumstances were not favorable to the work in hand. Rain had been falling for several days, and was still falling, and the ground was very wet, soft, and muddy. The work could not be completed in daylight, and it was necessary to carry it on through the night, with the aid of lanterns and bonfires, as might be possible under a wet sky. The place of the wreck was a high embankment or fill, 20 feet or more above the level of the adjacent land, and the borrowpits below held more or less water. The width of the embankment was not much greater than the track, so that there was not much room for building a temporary track around the wreckage, or removing the old track to accomplish the same thing. The general course of the road at that place is east and west, and about 180 feet of track west of the bridge over Salt River was displaced and torn up. Upon looking over the ground, and considering the work to be done, Lehman decided to move the track two feet south of its original position on the embankment. In doing this, part of the wreckage would be avoided, and the remainder would have to be removed as the work progressed. To this work Lehman appointed Eaton, foreman of section 14, and gave his personal attention to other matters, but he says he returned twice or three times during the night "to see how the track was being repaired, and if everything was safe." The work of relaying the track in this manner was carried on through the greater part of the night, until at length some trucks from a freight car were found lying across the north rail of the original track, which

it was necessary to remove. After several unsuccessful efforts to remove them, Costello, division superintendent, came upon the ground and suggested to McCormick the use of the derrick or wrecking car. McCormick had been trying to remove the trucks by means of a cable attached to a locomotive, and with men using crowbars and possibly other appliances. He described himself as "car repaire and wrecker inspector," and he had been for some time in charge of the derrick or wrecking car used on this occasion. More than other person on the ground he seems to have had some special duties, in connection with his car, in the removal of wrecks; but he had not, so far as shown in this record, more than one man in his charge, and up to that time, on this occasion, he had worked with his own hands in common with the other employees of the company. He was superior to the others only in his knowledge of the use of the wrecking car, and in having charge of it when it was in action. McCormick assented to the use of the wrecking car, and it was brought up for the purpose of removing the trucks. It then stood on the last rails of the new track laid by Eaton, which at this point were about 12 or 15 inches south of the rails of the old track. The trucks which were to be removed were partly on the northerly side of the new and old tracks, but in front of the wrecking car. The plan was to raise them sufficiently so that they could be moved south of both tracks when suspended on the swinging boom of the derrick. For that purpose several men were called to assist Mr. McCormick in pushing the trucks to the south when they should be lifted above the tracks with the aid of the derrick. Other men mounted the car, by Costello's command, for the purpose of working the derrick, and in due time the trucks were elevated above the tracks as was proposed. But, contrary to all expectation, Mr. McCormick and the men who had hold of the trucks were unable to control them, and the trucks went north rather than south; the wrecking car was overturned, and James W. Wilson, one of the men employed in working the derrick, fell under the trucks of that car and was killed. Wilson was a sectionman from section 14, and his foreman was Asbury Eaton. This action was brought by his widow, upon a statute of the State of Missouri, (Rev. Stat., Sec. 4425 et seq.,) to recover damages resulting to her from his death, and she had judgment in the circuit court.

Referring, now, to the acts of negligence charged in the complaint, and the evidence at the trial on that subject, the prominent question of

fact in the case is the condition of the new track on which the wrecking car stood at the time of the casualty, and whether it was well built. Several witnesses testify that immediately after the car was overturned the north rail was observed to be two to four inches lower than the south rail, and those who deny the statement seem not to have given much attention to the matter. If such was the fact, it may have been due to carelessness in construction in placing the rails in that position, or to the sinking of the north rail under the weight of the wrecking car. In the latter case, the result would indicate that the rails were not adequately supported by ties. One witness testifies that only three ties were laid under each rail; others say four to six were laid, and still others give varying numbers, up to ten or twelve.

Whether the north rail was first laid lower than the other, or sunk in the mud under the wrecking car, if in fact it was lower than the other immediately after the casualty, it was obviously a fault in construction. The track was straight at that point, and therefore there was no reason for placing one rail higher than the other, as is usual on curves. It is to be observed, also, that the new track was not intended for temporary use in removing the wreckage only, but was for the general traffic of the road during the following day, and perhaps longer. Under all the circumstances prevailing at the time, the duty of the company to restore the track as speedily as possible, and for that purpose to go on with the work at night, through rain and mud, no one will contend that the company should be held to the same care in building its track as would be demanded under more favorable conditions. Nevertheless, some care was necessary to make a track adequate to the support and safe passage of trains, not alone in the interest of the public, who were using the road extensively, but also in the interest of the employees of the company who should be sent over the road. With certain well understood qualifications, which it is not necessary to define in this connection, a servant is as fully entitled to a safe track as any traveler over the road. If the track was in fact defective, and by the use of more ties or in any other way it could have been made safe for the wrecking car, the duty of the company in that regard is clear and unmistakable. It seems to be conceded that the north rail, being lower than the other, would operate to deflect the load on the derrick in the manner and to the extent which actually occurred; so that it was a material question for the jury to consider whether the north rail of the

new track was first placed lower than the south rail, or, not being so placed, whether it sunk under the wrecking car, and thus caused the load on the derrick to swing to the north and overturn the car.

But, if this be allowed, we are urged to declare that the new track was laid by fellow servants of Wilson, for whose negligent acts the company cannot be charged at the suit of one of their number. But our vision is not so limited, since we are bound to find the directing mind of the company, and that is a matter of no embarrassment in this instance. The roadmaster, who, by the title and proper function of his office, had full authority over the track and the manner of building it, was there of person, and, as he says, vigilant and active in the discharge of his duties. No other officer could represent the company better or more fully in the matter of constructing the track, and the company could not do the work at all unless by the agency of a natural person. We are therefore authorized to say that the company was present in such form and degree as is possible to a corporation, when this track was laid, within the principle declared in *Railway Co. v. Ross*, 112 U. S., 377, 5 Sup. Ct. Rep., 184, and thus became responsible for all that was done or omitted at that time.

The circuit court did not err in declining to instruct for plaintiff in error, or in submitting to the jury upon the evidence the issue as to the condition of the railway track as the probable cause of Wilson's death.

As to the issue upon the use of the wrecking car, the writer holds that it was improperly submitted to the jury, and that the fifth instruction asked by plaintiff in error ought to have been given by the court. But this court is unable to agree on this proposition, and declines to express an opinion upon it.

Two other questions, affecting the measure of damages, are presented in the record, upon which we have sought only to ascertain what construction has been given to the statute by the Supreme Court of Missouri. The first arises out of the admission of testimony as to the number and ages of Mrs. Wilson's children. When it was learned that the children were of an age to support themselves, the testimony was abandoned by counsel for plaintiff below. But it was not withdrawn from the jury, and counsel for plaintiff in error insisted that it had weight with that body. If so, the Supreme Court of the State has held that in an action by a wife for the death of her husband, such evidence may be received, for the reason that on

the death of the husband she becomes responsible for the care of the children. *Tetherow v. Railway Co.*, 98 Mo., 84, 11 S. W. Rep., 310. And this must be accepted in federal courts as the meaning of the statute on which the action is based.

Error is also assigned on the charge of the court that the jury might consider the loss which defendant in error sustained in consequence of being deprived of her husband's society. In two cases reported from the Supreme Court of Missouri before this action was tried, it was held that such damages were properly allowed in an action by a husband for an injury to his wife. *Blair v. Railroad Co.*, 89 Mo., 335, 1 S. W. Rep., 367; *Furnish v. Railway Co.*, 102 Mo., 669, 15 S. W. Rep., 315. In the absence of other expression from that court, it might well be assumed that the same rule would obtain in an action on the statute by husband or wife. Since this case was tried, however, an opinion of that court has been published which distinctly declares that in an action on the statute by a wife for the death of her husband, nothing shall be allowed for loss of society. *Schaub v. Railway Co.*, (Mo. Sup.) 16 S. W. Rep., 924.

As already pointed out, the earlier cases were common law actions for injuries to the wife, and it is not to be assumed that the last case is in conflict with the others. On the authority of the Schaub Case, and because it seems to be in accord with the current of authority elsewhere, we feel bound to declare that the law of Missouri is and has been that in an action on the statute of that State by a wife for the death of her husband, the loss of companionship or society of the husband is not an element of damages, and therefore there was error in the instruction mentioned.

The judgment of the circuit court will be reversed and the cause will be remanded for a new trial.

Eminent Domain—Powers of Cemetery Associations—Constitutional Law.

Act of Michigan, 1869, authorized the formation of stock companies to establish rural cemeteries, and provided for their regulation and maintenance. Held, that an amendment passed in 1875 (How. St. Mich., Sec. 4778), whereby such companies were authorized, on condemnation proceedings, to take other property to enlarge their cemeteries, is unconstitutional, in that it authorizes private corporations to exercise the power of eminent domain for private purposes. The contention of the respondent is

that there is no valid statute which authorizes or permits the condemnation of private property for the enlargement of this cemetery; that the act of 1869 authorized the formation of corporations to establish rural cemeteries, and provided for the care and maintenance of rural cemeteries so established, and only such as are so established. In my judgment, although the point is not made in the briefs, the amendment of 1875 is, as applicable to rural cemeteries established by corporations formed under the act of 1869, unconstitutional and void, as it attempts to invoke the exercise of the power of right of eminent domain for the condemnation of lands, at the instigation of a private corporation for private uses. Eminent domain is that sovereign power vested in the people by which they can, for any public purposes, take possession of the property of any individual upon a just compensation paid to him. 6 Am. & Eng. Enc. Law, 511; 2 Kent. Com., 339. It has been defined by this court to be "the rightful authority which exists in the sovereignty to control and regulate those rights of a public nature which pertain to its citizens in common, and to appropriate and control individual property for the public benefit, as the public safety, necessity, convenience and welfare may demand. *Trombley v. Humphrey*, 23 Mich., 471-474. It was held in that case that the State had no authority by virtue of its eminent domain to condemn lands for the purpose of turning them over to the United States for the erection and maintenance of light houses; that the act which undertook to authorize the government to do this was unconstitutional, as appropriating the property of individuals without due process of law; and that the right of eminent domain in any sovereignty exists only for its own purposes. In *Ryerson v. Brown*, 35 Mich., 333, the court say that in authorizing condemnation proceedings it is essential that the statute should require the use to be public in fact; in other words, that it should contain provisions entitling the public to accommodation; that property can never be condemned for private improvements, except where they belong to a class that cannot usually exist without the exercise of that power, and where the public welfare requires that they shall be encouraged. The exercise of the right of eminent domain is limited to cases in which the public have an interest. *Cody v. Rider* (Ky.), 1 S. W. Rep., 2. It can never be just to take property under pretense of public benefit which is not needed by the public, however much it may advance the interests in which the public have no

concern. *Paul v. Detroit*, 32 Mich., 108-119. The State has no right to take the property of one citizen and give it to another, whether with or without compensation. *2 Washb. Real Prop.*, 539; *Tied. Lim. Police Powers*, Sec. 121b, 390. As has been said, "when one man wants the property of another, the legislature will not aid him in the acquisition." *Taylor v. Porter*, 4 Hill, 147. See *Wilkinson v. Leland*, 2 Pet., 658; *Heyward v. Mayor*, 7 N. Y., 324. It was held in *People v. Salem*, 20 Mich., 454, that a legislative act originating proceedings by or in pursuance of which individual property was to be taken, under the forms of taxation, for the benefit of a private corporation, could not be justified as an exercise of legislative power. It was not therefore due process of law. Mr. Cooley says: "The public use implies a possession, occupation and enjoyment of the land by the public at large, or by public agencies; and the due protection to the rights of private property will preclude the government from seizing it in the hands of the owner, and turning it over to another, on vague grounds of public benefit, to spring from a more profitable use to which the latter may devote it." *Cooley Const. Lim.*, 654. The use must be by the general public of the locality, and not by particular individuals. *McQuillen v. Hatton*, 42 Ohio St., 202; *Ross v. Davis*, 97 Ind., 79. A use which may be monopolized or absorbed by the few, and from which the general public may and must ultimately be excluded, is in no sense a public use. Land cannot be condemned for the purpose of enabling those instigating the proceedings to parcel it out to private individuals; nor is a use which is not common to the public, and over which the State has surrendered that control and regulation necessary to secure such common use, a public use. The use of land for railways and turnpikes has been declared to be a public use, because it is open to all upon the payment of tolls which are regulated by law, and the law requires such ways to be kept open for use by the public impartially. As has been said, the question whether the use is public or private depends upon the right of the public to use the property, and to require the corporation, as a common carrier, to transport passengers or freight over the same. *Kettle River R. Co. v. Eastern Rwy. Co.* (Minn.), 43 N. W. Rep., 469; *DeCamp v. RR. Co.*, 47 N. J. Law, 47; *Phillips v. Watson*, 63 Iowa, 33; *Clarke v. Blackmar*, 47 N. Y., 156; *Lewis Em. Dom.*, Sec. 166. It has been held that condemnation proceedings cannot be resorted to to take lands for the construction of spur tracks which are made for the accommodation of individual shippers.

In re Niagara Falls & W. Rwy. Co. (N. Y.), 15 N. E. Rep., 429; *RR. Co. v. Babcock* (N. Y.), 17 id., 678; *RR Co. v. Wiltse* (Ill.), 6 id., 49; *Pittsburgh, etc., R. Co. v. Benwood Iron Works* (W. Va.), 8 S. E. Rep., 453. To justify the condemnation of lands for a private corporation, not only must the purpose be one in which the public has an interest, but the State must have a voice in the manner in which the public may avail itself of that use. In *Gilmer v. Lime Point*, 18 Cal., 229, a public use is defined to be a use which concerns the whole community, as distinguished from a particular individual. The use which the public is to have of such property must be fixed and definite. The general public must have a right to a certain definite use of the private property on terms and for charges fixed by law, and the owner of the property must be compelled by law to permit the general public to enjoy it. It will not suffice that the general prosperity of the community is promoted by the taking of private property from the owner, and transferring its title and control to a corporation, to be used by such corporation as its private property, uncontrolled by law as to its use; in other words, a use is private so long as the land is to remain under private ownership and control, and no right to its use or to direct its management is conferred upon the public. *In re Eureka Basin, etc., Co.*, 98 N. Y., 42. It is for the court to determine whether or not the use is a public one. *In re Deansville Ass'n*, 66 N. Y., 569; *In re New York, etc., RR. Co.*, 77 id., 248; *City of Savannah v. Hancock* (Mo.), 3 S. W. Rep., 215; *Pittsburgh, etc., RR. Co. v. Benwood Iron Works* (W. Va.), 8 S. E. Rep., 453; *Tied. Lim. Police Powers*, Sec. 121a, page 378; *Cooley Const. Lim.*, 660. This very question arose in *Association v. Beecher* (Conn.), 5 Atl. Rep., 353, and the court say: "The complaint alleges that the plaintiff is an association duly organized under the laws of this State, for the purpose of establishing a burial ground; that it now owns one; that it desires to enlarge it, and that such enlargement is necessary and proper. There is no allegation that the land which it desires to take for such enlargement is for the public use in the sense indicated in this opinion. The demurrer, for the reason that the complaint does not set out any right in the plaintiff to acquire title to the land of the defendants, otherwise than by their voluntary deed, must be sustained."

In re Deansville Association, supra, it was held that the statute authorizing rural cemetery associations to acquire land by exercising the right of eminent domain was unconstitutional.

tional and void, for the reason that the use was a private one. The court say: "The land is to be vested in trustees, with power to divide into lots, and sell these lots to individual owners. It is difficult to see what interest the public will have in the lands or in their use. No right on the part of the public to buy lots or bury their dead there is secured. The prices at which the lots are to be sold are to be fixed by private agreement. The corporation is to be managed by trustees elected by the lot owners. The lots, or the rights of the owners therein, are to descend as private property to the heirs of these owners; and by the act of 1874 the owners may, by leave of the courts, sell their lots and put the proceeds in their pockets. The substantial right of enjoyment of the property is vested in the individual lot owners, and the whole effect of the incorporation of these cemetery associations is to enable a number of private individuals to unite in purchasing property for their own use, and that of their descendants, as a place of burial, and to secure a permanent management of it, through the instrumentality of trustees appointed by themselves, and subject to no other control, with the privilege, when they cease to use their lots as a place of burial, to sell them, and receive the proceeds for their own benefit. It is argued that the property is to be used a place of burial, and that the burial of the dead is a public benefit, and therefore the use is public. But the answer to this argument is that the right of burial in these ground is not vested in the public, or in the public authorities, or subject to their control, but only in the individual lot owners. If the fact that it is a benefit to the public that the dead should be buried is sufficient to make a cemetery a public use, the legislature might authorize A to take the land of B for a private burial place of A and his family. The fact that this land is taken for the benefit of a number of individuals, for division among themselves or their grantees, for their own use as a cemetery, makes the case no stronger than if taken for the benefit of a single individual." Precisely the same may be said of a corporation formed under the act in question. The lands owned by it are under the absolute control and dominion of the corporation. It may sell to A, and refuse to sell to B, and by its sale to A it excludes every other person from that parcel. Not only may it sell to A for burial purposes, but it may sell to any other person for any purpose, if, in its judgment, the lands are not occupied or required for burial purposes. Mich. Sup. Ct., Oct. 9, 1891. Board of Health of Township of Portage v. Van Hoesen. Opinion by McGrath, J. Morse, Long and Grant, JJ., concurred with McGrath, J. Champlin, C. J., concurred in the result.

STOCKHOLDERS in The Law Reporter Company of Washington City will take notice that an election for the purpose of choosing nine trustees will be held at the office of the Company, 503 E St., N. W., on Monday, February 8, 1892; polls to be open from 1 to 3 o'clock p. m.

B. F. LEIGHTON, Secretary.

Rule of Court.

** * * * Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.*

Legal Notices.

FIRST INSERTION.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of WILLIAM M. IRELAND, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of January, 1892.
CHAS. R. SMITH,
611 Q St. n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of SARAH HENRY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of January, 1892.
WILLIAM COCHRAN,
4 Edwards & Barnard, Proctors. 465 F St. Southwest.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of MARY DORSEY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 23d day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23d day of January, 1892.
CALVIN T. S. BRENT,
4 Jas. H. Smith, Proctor. 1038 18th St. n. w.

This is to Give Notice

That the subscribers, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of JAMES BRADLEY ADAMS, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 25th day of January, 1892.
BYRON S. ADAMS,
BETTIE B. SWAYZE,
4 John B. Larner, Proctor. 512 11th St. n. w.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of MARY L. HARTLEY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 22d day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of January, 1892.

EDWIN BRADFIELD HARTLEY,
4 Henry S. Matthews, Proctor. 78 Myrtle Ave.
Montclair, N. J.

This is to Give Notice

That the subscribers, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of MOSES T. BRIDWELL, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscribers, on or before the 16th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 15th day of January, 1892.

ANDREW A. LIPSCOME,
Mertz Building, 11th and F. n. w.
4 JOB BARNARD, 500 5th St. n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters of Testamentary, on the personal estate of CHARLES X. MARTIN, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 22d day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of January, 1892.

IRVIN B. LINTON,
4 Irwin B. Linton, Proctor. 1534 9th St. n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of EDWARD J. SHORT, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 25th day January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of January, 1892.

JOSEPH C. JOHNSON,
4 E. M. Spaulding, Proctor. 64 Corcoran Building.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 26th day of January, 1892.

The Gottschalk Company of
Baltimore, Md. } vs. } No. 11,626. Eq. Docket.
James P. Garrity et al.

On motion of the plaintiff, by Mr. S. T. Thomas, its solicitor, it is ordered that the defendants, IDA V. GARRITY, CORA GARRITY, FLORENCE GARRITY and WILLIAM GARRITY, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to subject the equitable interests of the defendants in sub lot 8, in square 315, in Washington, D. C., to the payment of a certain judgment at law, numbered 29,384 in said cause in favor of the said Gottschalks Company against the above named James P. Garrity, for the sum of \$1,449.06 interest and costs.

A. B. HAGNER.

True copy. Test: J. R. Young, Clerk, &c.
4 By M. A. Clancy, Asst. Clerk.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphan's Court business, Letters Testamentary on the personal estate of CHRISTOPHER E. P. RODGERS, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 23d day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23rd day of January, 1892.
ALEX. RODGERS,
4 James Lowndes, Proctor. 1829 Jefferson Place.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

January 26th, 1892.

In the case of Job Barnard, Administrator c. t. a. of MARCUS M. WHEELOCK, deceased, the Administrator c. t. a. aforesaid, has, with the approval of the Court, appointed Friday, the 26th day of February, A. D. 1892, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator c. t. a. will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
4 No. 4267. Ad. Doc. 16.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

January 22nd, 1892.

In the case of John Couper Edwards, John Lafonchere Edwards, and George Kerr Edwards, Executors of ELIZABETH R. EDWARDS, deceased, the Executors aforesaid have, with the approval of the Court, appointed Friday, the 26th day of February, A. D. 1892, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter, previous to the said day.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
4 No. 4244. Ad. Doc. 16. Reginald Fendall, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

January 22d, 1892.

In the matter of the Estate of JANE ELIZABETH OLIVIA RHODES, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by William Joseph McCauley of the District of Columbia.

All persons interested are hereby notified to appear in this Court on Friday, the fourth day of March next, at one o'clock, p. m., to show cause why the said Will should not be proved and admitted to probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Washington Post previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
4 No. 4788. Ad. Doc. 17. James Hoban, Proctor.

Legal Notices**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of HENRY K. FULTON, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of January, 1892.
LAURA E. FULTON,
Chapin Brown, Proctor. 1514 Park St.
Mount Pleasant, Washington, D. C.

SECOND INSERTION.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphan's Court Business, Letters of Administration on the personal estate of JAMES McMULLIN, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of January, 1892.
GEORGE J. BOND,
James P. McCrelis, Proctor. 623 F St. n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphan's Court business, Letters Testamentary on the personal estate of SHADRACH NUGENT, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of January, 1892.
GEO. W. LINKINS,
19th and H Sts. n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphan's Court business, Letters of Administration on the personal estate of MARY HICKEY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 18th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of January, 1892.
MARGARET HICKEY,
Fillmore Beall, Proctor. 100 F St. n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 20th day of January, 1892.

J. H. Adriams } vs. No. 12,585. Equity Docket 88.
vs. Isaac S. Lyons et al.

On motion of the complainants, by Mr. O. H. Budlong his solicitor, it is ordered that the defendant, JOHN MEREDITH, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is a sale for purposes of partition of part of lot No. 26, section 8 of Barry Farm, in the District of Columbia.

This notice to be inserted once a week for each of three successive weeks in the Washington Law Reporter and the Evening Star.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
By L. P. Williams, Asst. Clerk.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,**
Holding a Special Term for Orphans' Court Business.

January 15th, 1892.

In the matter of the Estate of PATRICK CONNELLY, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration, c.t.a., on the Estate of the said deceased, has this day been made by Catherine Connally.

All persons interested are hereby notified to appear in this Court on Friday, the 12th day of February, next, at 1 o'clock p. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration, c.t.a., on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT, Register of Wills for the District of Columbia.
3 Ernest L. Schmidt, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 20th day of January, 1892.

Bartow L. Walker and wife } vs. No. 12,629. Equity Docket 88.
Averda Osburn et al.

On motion of the complainants, by Leo Simmons, their solicitor, it is ordered that the defendants, ALVERDA OSBURN, GRACE OSBURN, MASON OSBURN, DECATUR OSBURN and RICHARD OSBURN, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a decree for sale, to make partition of the property described in the bill in this cause, of which John Young died seized in Washington City.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
3 By L. P. Williams, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

January 15th, 1892.

In the matter of the Estate of CARL L. WINDHOLZ, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by William A. Rue.

All persons interested are hereby notified to appear in this Court on Friday, the 12th day of February next, at one (1) o'clock p. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER and Washington Post previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT, Register of Wills for the District of Columbia.
3 No. 4773. Admin. Doc. 17. Chapin Brown, Proctor.

THIRD INSERTION.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters Testamentary on the personal estate of PATRICK J. MURPHY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 11th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hand this 11th day of January, 1892.
S. R. BOND.

3 S. R. Bond, Proctor. CHARLES W. HANDY.
321 4½ St. n. w.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

The 12th day of January, 1892.

Matthew Semple, and Robert A. Semple,
trading as Semple & Co., plaintiffs,
vs.
Job W. McAfee, John Q. McAfee, and
Harry C. McAfee, trading as McAfee &
Bros., defendants.

No. 32,318.
At Law. Docket —

On motion of the plaintiff, by Messrs. Gordon & Gordon, their solicitors, it is ordered that the defendants, JOB W. McAFFEE, JOHN Q. McAFFEE, and HARRY C. McAFFEE, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to condemn certain credits of defendant's heretofore attached in this cause.

By the Court. M. V. MONTGOMERY, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.

2 By H. W. Hodges, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

George E. Emmons }
vs. } In Equity. No. 18,519.
Moses Kelley et al.

On motion of the complainant, by Messrs. Padgett & Forrest, his attorneys, it is this 9th day of January, 1892, ordered that the defendant, Charles E. Prentiss, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to substitute a trustee in the place and stead of Charles E. Prentiss, named as trustee in the certain deed of trust in the bill of complaint set out.

By the Court. A. B. HAGNER, Justice.
A true copy. Test: J. R. Young, Clerk.
2 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business,

January 9th, 1892.

In the case of Charles M. Matthews, Executor of ACHSAH C. DAVIS, deceased, the Executor aforesaid has, with the approval of the court, appointed Friday, the 6th day of February, A. D. 1892, at 1 o'clock p.m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
2 No. 4200. Ad. Doc. 16. Henry S. Matthews, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

Holding a Special Term for Orphans' Court Business.

January 13th, 1892.

In the case of Frank M. Parker, Administrator of the estate of MARY E. PARKER, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 12th day of February, A. D. 1892, at 11 o'clock a.m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
2 No. 4237. Ad. Doc. 16. William Twombly, Proctor.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of MARY HELEN CHURCHILL BAIRD, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of January, 1892.

LILY HUNTER BAIRD,
2 R. E. Pairo, Proctor. 1445 Massachusetts Ave. n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

January 9th, 1892.

In the case of Henry Wise Garnett and Samuel P. Bell, Executors of ANNA M. C. SMITH, deceased, the Executors aforesaid have, with the approval of the Court, appointed Friday, the 12th day of February, A. D. 1892, at 11 o'clock a.m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and in the Evening Star previous to said day.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
2 No. 4198. Ad. Doc. 16. Randall Hagner, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

January 8th, 1892.

In the case of Genevieve T. Yager, Administratrix, c.t.a. of BERTRAND S. ASHBY, deceased, the Administratrix c.t.a. aforesaid has, with the approval of the Court, appointed Friday, the 12th day of February, A. D. 1892, at 11 o'clock a.m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administratrix c.t.a. will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER and in the Evening Star, of Washington, D. C. previous to the said day.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
2 No. 3893. Ad. Doc. 16. Edwards & Barnard, Proctors.

FOURTH INSERTION.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

The 6th day of January, 1892.

The Washington Loan and Trust Co. vs. No. 18,583. Eq. Doc. 33.

Thomas V. Hammond et al.

On motion of the plaintiff, by Mr. John B. Larner, its solicitors, it is ordered that the defendants, WILLIAM McCALLUM, AGNES McCALLUM, and the unknown heirs of ANDREW McCALLUM, deceased, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to declare a certain deed in fee simple to part of lot 37 in Susan E. Cunningham's subdivision of lots in square 99, Washington, D. C., from the said defendant Hammond to said Andrew McCallum, deceased, a mortgage, and for sale of said property for payment thereof.

Said notice to be published once a week for each of four successive weeks in The Washington Law Reporter and the Evening Star and New York Herald.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
1—4t. By M. A. Clancy, Asst. Clerk.
[Filed January 6, 1892. J. R. Young, Clerk.]

The Washington Law Reporter.

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WASHINGTON, D. C., - - - FEBRUARY 4, 1892

A RESOLUTION was offered at the last meeting of the Bar Association recommending the court in General Term to so amend the 13th Rule of Court as to make the summons in law causes returnable twenty days after the service of the writ exclusive of the day of service, instead of as now twenty days after the next return day. The consideration of the resolution went over to the next quarterly meeting, owing to the lateness of the hour, although there is little doubt that the sense of the Association was largely, if not unanimously, in favor of its adoption. Indeed, the entire bar, so far as we have heard any expression of opinion upon the subject, is of the same view. The power of the court to so amend the Rule can hardly be questioned. Even if not authorized by the organic act, which gives the court power to amend its rules, it would be warranted by the amended Act of Congress relating to jury service. Indeed, no statutory power is needed in such a case. The common law power of courts over its process and modes of procedure is amply sufficient not only to regulate the time at which its writs are returnable, but the forms of the writs as well. (1 Black., 522.) Moreover, the court in General Term has itself made a very recent precedent for the change by its order altering the time of return of process in Equity, which was formerly, under Rule 8, returnable in twenty days, but is now returnable in ten days. As to the propriety of the change there would seem to be no room for discussion. Under the Rule as it now exists, the practical result is that the

time of return varies from twenty to fifty days, according to the time of the service of the writ upon the defendant, an inequality which, aside from its manifest injustice to litigants, brings about the greatest inconvenience to the clerk's and the marshal's office by crowding all returns to writs of summons into one day. We have never heard of any reason for the existence of the present system except that what was good enough for our grandfathers and great-grandfathers ought to be good enough for us—a sentiment peculiarly a legal one, but which has ever blocked the way of progress, especially to law reforms.

AN interesting decision on the law of adverse possession as applied to the public streets of a municipality is afforded by the case of Meyer v. Graham, recently decided by the Supreme Court of Nebraska, (Dec. 8th, 1891), where it was held that when a person has been in the actual, visible, exclusive and uninterrupted possession of a portion of a street under a claim of right for the statutory period of limitations, the title thereto vests absolutely in such occupant. The authorities upon this question, as shown by the court in its opinion, are conflicting. In the courts of last resort of California, Pennsylvania, New York, New Jersey, Rhode Island and Louisiana, it is held that the doctrine of adverse possession of realty has no application against municipal corporations. On the other hand, the courts have held to the contrary doctrine in Ohio, North Carolina, Kentucky, Texas, Missouri, Illinois, Virginia, Iowa, Arkansas, Mississippi, West Virginia, and New Hampshire. The court, in rendering its decision, quotes its language in a former case (Shock v. Falls City, 148 N. W. Rep., 468), as follows:

"If the private citizen at any time encroach with his buildings and inclosures upon the public streets, the municipal authorities should, in the exercise of proper vigilance and of their undoubted authority, interfere, by the legal means provided in their charter, to prevent such encroachment in due time, and thus preserve for

the public use the squares, streets and alleys of the town in their original dimensions; but if a private individual or citizen has been permitted to remain in the continual, adverse, actual possession of public ground, or of a public street, or of a part of a street, as embraced within his inclosure, or covered by his dwelling or other buildings, for a period of twenty years or more, without interruption, such citizen will be vested thereby with the complete title to the ground so actually occupied by him; and the title thus perfected by time will be just as available against a municipal corporation as it would be against an individual, whose elder title and right of entry may be barred by a continued adverse possession for twenty years of his land." In *City of Wheeling v. Campbell*, supra, that court, after a complete and critical review of the conflicting authorities, in the opinion says: "We see to reason why a municipal corporation should not be held to the same degree of diligence in guarding their streets and squares from encroachments as natural persons are in protecting their property from the adverse possession of others. We do see great reason why no time should bar the sovereign power, because the officers of the sovereign, whether king or State, have such various and onerous duties to perform that the rights of the sovereign may be neglected; and all the people of the kingdom or State are interested in having the rights of the sovereign preserved intact, and not subject to be impaired or lost by the neglect of officers. But the same reason does not apply to a municipal corporation. A city or town is a compact community, with its city or town council, its committee on streets and alleys, and its street commissioners, whose special duty it is to see that the streets, squares and alleys are kept in proper order, and free from obstructions or encroachments. And if, with all this machinery and power, confined to so narrow a compass, and the interests of the corporation to exercise it, the city authorities permit an individual to encroach upon the streets, alleys or squares of the city, and hold, enjoy and occupy the same, claiming them as his own under his title, without interruption or disturbance in that right, for the period prescribed in the Statute of Limitations, the city not only does, but, we think, according to reason as well as authority, ought to lose all right thereto." Upon a careful consideration of the question we are satisfied, upon principle as well as authority, that adverse possession by an abutting lot owner of a portion of a street in a city for the statutory period of limitations will give a complete title thereto to the occupant."

Supreme Court of the District of Columbia.
IN GENERAL TERM.

THE STATE OF ARKANSAS, USE OF COUNTY
OF FAULKNER,
v.

THOMAS M. BOWEN ET AL.

1. The constitutional provision respecting the faith and credit to be given judgments of the courts of other States does not apply to judgments founded upon the penal laws, or laws relating exclusively to the collection of the revenues of the State wherein it is rendered.
2. In an action upon a judgment of another State the court may go behind the judgment, not for the purpose of determining the merits of the case, but to ascertain whether it is such a judgment as it is authorized to take cognizance of and to enforce as the judgment of another State.

At Law. No. 26,874. Decided December 16, 1891.

The CHIEF JUSTICE and Justices COX and JAMES sitting.

MOTION for a new trial upon a bill of exceptions in an action upon a judgment rendered in another State. *Judgment reversed.*

Mr. JAS. M. JOHNSTON for plaintiff.

Messrs. J. P. JONES and R. A. HOWARD for defendant.

Chief Justice BINGHAM delivered the opinion of the Court:

This is an action upon a judgment rendered in Faulkner County, in the State of Arkansas, against the defendant, Thomas M. Bowen and others. It is alleged in the declaration to have been recovered by the plaintiff against the defendant on the 2d day of August, 1875, for the sum of \$6,621.48, and interest thereon at the rate of 50 per cent. per annum until paid. It is averred in the declaration that the State of Arkansas now brings the action instead of the County of Faulkner, because by an act of the legislature of the State of Arkansas the county of Faulkner was dissolved, and the statute further provided that all rights of action that the county of Faulkner had at the time of such dissolution should be prosecuted by the State of Arkansas for the use of Faulkner County.

The defendant, Bowen, pleads—

1. *Nul tiel* record.
2. That the said alleged cause of action did not accrue within three years next preceding the bringing of this suit.
3. That at the time of said alleged recovery of judgment the defendant was not, and for several years theretofore had not been, a resident of the State of Arkansas, but was then, and for several years prior thereto, had been, and still is, a citizen of the State of Colorado, and that the defendant was not at any time between the commencement of the proceedings in which said alleged recovery was had, and the date

thereof, to wit, the 2d day of August, A. D. 1875, within the jurisdiction of said county court of the county of Faulkner, in the State of Arkansas, and that he had no legal notice of the pending of said proceedings by service of process or otherwise, and that he did not at any time during the pendency of said proceedings, either before or after the date of said alleged recovery, voluntarily appear and subject himself to the jurisdiction of said court, nor did he authorize, empower, direct or permit, either directly or indirectly, any agent, attorney, counsellor or other person whatsoever, to appear for him in the said proceedings pending in the said county court of Faulkner County, or to represent him in said matter, or in anything connected therewith, in any manner whatsoever.

On the trial of the case a verdict was rendered for the plaintiff, and a motion for a new trial made by the defendant, urging a number of reasons for the reversal of the judgment rendered upon the verdict of the jury and the granting of a new trial. In the course of the hearing, and after the testimony was all given to the jury, a motion was made by the counsel for the defendant to take the case from the jury and that the jury should be directed to return a verdict for the defendant. This was overruled, and the court charged the jury that the judgment of the Faulkner County court against Bowen was conclusive as to his indebtedness to Faulkner County, and entitled the plaintiff to recover, unless the jury were satisfied that the attorney, Whipple, had no authority to appear for Bowen. Exception was taken to this charge.

It appears upon the face of this record, and especially by the transcript of the proceedings in the State of Arkansas, that the foundation of the original suit was a collector's bond given by one Benton Turner, a collector, with the defendant and several others as sureties, for the faithful performance of his duty as collector of taxes, in the county of Faulkner, State of Arkansas. It is alleged in the declaration filed in the suit in Arkansas, that Turner was indebted in a certain sum to the county of Faulkner for the amount of taxes collected by him as such collector and not accounted for. It is further shown by this record that not only was the original suit for this, but in the rendition of the judgment, pursuant to the provisions of the statute of Arkansas, there was included a penalty of 25 per cent. on the amount so found to be due from him as collector.

The question arises, whether, under such circumstances, this court should, by virtue of the

laws of the United States or any comity that prevails between the States of this Union, entertain jurisdiction of this action. It has been very well settled that one State will not take cognizance of or enforce the judgment of another State where such judgment is founded upon the penal laws, or laws relating exclusively to the collection of the revenues of the State wherein it is rendered. Such laws relating to the domestic economy of the State, and the management of its domestic affairs, are to be enforced directly by the courts of the State which enacts the laws, and not by the courts of other jurisdictions. This rule prevails under the international law between nations, and it has been held repeatedly that it prevails in the United States as between the States, and is not within the provision of the Constitution of the United States which provides "That the judgments of the courts of any State are to have such faith and credit given to them in every court within the United States as they have by law or usage in the State in which they were rendered." This does not relate to actions to recover penalties and fines, nor to actions authorized by statutes relating directly to the collection of the revenues of a State, or the enforcement of fines, penalties and forfeitures for non-compliance with or violations of such statutes.

We find this principle clearly laid down in the case of the State of Wisconsin v. The Pelican Insurance Co. of New Orleans, reported in 127 U. S., pages 289, 291, 292 and 293. It was said by Justice Gray, in delivering the opinion of the court: "By the law of England and of the United States, the penal laws of a country do not reach beyond its own territory, except when extended by express treaty or statute to offenses committed abroad by its own citizens; and they must be administered in its own courts only, and cannot be enforced by the courts of another country." Wheat, Internat. L. 8th ed., Secs. 113, 121.

"Chief Justice Marshall stated the rule in the most condensed form, as an incontrovertible maxim. 'The courts of no country execute the penal laws of another.'

"The rule that the courts of no country execute the penal laws of another applies not only to prosecutions and sentences for crimes and misdemeanors, but to all suits in favor of the State for the recovery of pecuniary penalties for any violation of statutes for the protection of its revenue, or other municipal laws, and to all judgments for such penalties. If this were not so, all that would be necessary to give ubiqui-

tous effect to a penal law would be to put the claim for a penalty into the shape of a judgment." Whart Confl. L., Sec. 833; Westlake, Internat. L., 1st ed., Sec. 388; Piggott, Foreign Judg., 209, 210.

"The application of the rule to the courts of the several States and of the United States is not affected by the provisions of the Constitution and of the Act of Congress, by which the judgments of the courts of any State are to have such faith and credit given to them in every court within the United States as they have by law or usage in the State in which they were rendered." Const., Art. 4, Sec. 1; Act May 26, 1790, Chap. 11, 1 Stat. at L., 122, Rev. Stat., Sec. 905.

"Those provisions establish a rule of evidence rather than of jurisdiction. While they make the record of a judgment, rendered after due notice in one State, conclusive evidence in the courts of another State, or of the United States, of the matter adjudged, they do not affect the jurisdiction, either of the court in which the judgment is rendered, or of the court in which it is offered in evidence. Judgments recovered in one State of the Union, when proved in the courts of another government, whether state or national, within the United States, differ from judgments recovered in a foreign country in no other respect than in not being re-examinable on their merits, nor impeachable for fraud in obtaining them, if rendered by a court having jurisdiction of the cause and of the parties." Hanley v. Donoghue, 116 U. S., 1, 4.

"The essential nature and real foundation of a cause of action are not changed by recovering judgment upon it; and the technical rules, with regard to the original claim as merged in the judgment, and the judgment as implying a promise by the defendant to pay it, do not preclude a court, to which a judgment is presented for affirmative action (while it cannot go behind the judgment for the purpose of examining into the validity of the claim), from ascertaining whether the claim is really one of such a nature that the court is authorized to enforce it." Louisiana v. New Orleans, 109 U. S., 285, 288, 291, (27 : 936-938) Louisiana v. St. Martha's Parish, 111 U. S., 716, (28 : 574) Chase v. Custis, 113 U. S., 452, 464, (28 : 1038, 1042;) Boynton v. Ball, 121 U. S., 457, 466 (30 : 985, 986).

"From the first organization of the courts of the United States, nearly a century ago, it has always been assumed that the original jurisdiction of this court over controversies between a State and citizens of another State, or of a foreign country, does not extend to a suit by a

State to recover penalties for a breach of her own municipal law. This is shown both by the nature of the cases in which relief has been granted or sought, and by acts of Congress and opinions of this court more directly bearing upon the question."

The justice then proceeds to cite and analyze the cases which have been decided by the Supreme Court from its first organization to the present time relating to this subject.

It clearly appears from the transcript offered in evidence, and which was admitted against the objection of the defendant that the judgment in Arkansas was predicated upon a bond given by an alleged collector of taxes for the county of Faulkner, for the faithful performance of his duties, and that it related strictly to the collection of taxes in that county. It belongs to the revenue system of the State of Arkansas. It provided for heavy penalties, not only included in the judgment, but provided that the judgment itself, including the penalty of 25 per cent., should have an added percentage of 50 per cent. every year until the judgment should be paid. The amount of this judgment at the present time under the laws of Arkansas would be in the neighborhood of \$30,000, if you add the 50 cent. interest provided by the statute of Arkansas. Under the authorities to which I have called attention, it is entirely clear that all such statutes must be administered by the courts of the State that enact them; and that even the original cause of action could not be prosecuted in another State.

As indicated by the opinion of the Supreme Court of the United States, to which I have before referred, they cannot avoid this provision of law by first obtaining a judgment upon the cause of action in the courts of Arkansas, and then take a transcript of that judgment to another jurisdiction, and ask the courts of the latter to receive it as a judgment of the former jurisdiction. But the courts are authorized under such circumstances when besought to enforce the judgment of another State to look to what precedes the judgment, not for the purpose of determining anything about the merits of the case, but to determine whether or not it is such a judgment as they are authorized to take cognizance of and enforce as the judgment of another State. We think that the court was in error in instructing the jury that the judgment of Faulkner County court against Bowen was conclusive as to his indebtedness to Faulkner County. It was the duty of the court, upon the presentation of the transcript, and when an examination of it disclosed that it

related to the revenue laws of the State of Arkansas, and that it included large penalties as a part of the judgment to have dismissed the action, and to have said that this court could not assume the power to enforce such a judgment.

The judgment below will be reversed, the cause remanded to the Circuit Court, with direction to enter judgment for the defendant.

Supreme Court of Massachusetts.

RICHARD P. HALLOWELL, ASSIGNEE, ETC.,
OR JOSEPH W. SMITH,

v.

BLACKSTONE NATIONAL BANK.

1. A pledge of securities as collateral for a note which authorizes their sale "on the non-performance" of the promise, and the application of the proceeds to pay the note, and makes the surplus applicable "to any other note or claim" held by the pledgee against the pledgor is an absolute pledge of the securities for such other notes or claims, the right to enforce which does not depend on non-payment of the principal note.
2. Failure to pay the whole of a demand note when demanded, or to procure the extension of the balance as a time loan, is a breach of an agreement to pay on demand, within the meaning of a provision in a pledge of collaterals that in the event of such breach their surplus, after satisfying the note, may be applied to other demands against the maker; and the fact that the holder has agreed not to press the demand without further notice is immaterial.
3. Claims against the firm of which the maker of a note is a member are included in a provision in his pledge of collaterals to secure the note that, on his failure to pay it when due, any excess of the collaterals may be applied to "any other note or claim" held against him by the pledgee.

Decided September 3, 1891.

Report from the Supreme Judicial Court for Suffolk County (Field, Ch. J.) for the opinion of the full court of a suit brought to redeem certain securities which had been pledged by complainant's insolvent assignor to defendant as collateral for certain of his obligations. *Bill dismissed.*

Complainant's assignee executed and delivered to a defendant a note, of which the following is a copy :

25000 Dollars. Boston, Mass., Dec. 14, 1888.
On demand, after date, with interest at per cent. I promise to pay to the Blackstone National Bank of Boston, or order, at said Bank Twenty-five Thousand ~~100~~ Dollars, for value received, having deposited with this obligation as Collateral Security,

149 Shares Smith & Dove Man'g Co.,
200 " Pacific Guano Co., with authority to sell the same, or any collaterals

substituted for or added to the above, without notice, either at public or private sale, or otherwise, at the option of the said Blackstone National Bank, on the non-performance of this promise, said bank applying the net proceeds to the payment of this note, and accounting to me for the surplus, if any; and it is hereby agreed that such surplus, or any excess of collaterals upon this note, shall be applicable to any other note or claim against me held by said bank. Should the market value of any security pledged for this loan, in the judgment of the holder or holders hereof, decline, I hereby agree to deposit on demand (which may be made by a notice in writing, sent by mail or otherwise to my residence or place of business) additional collateral, so that the market value shall always be satisfactory to said bank, and failing to deposit such additional security, this note shall be deemed to be due and payable forthwith, anything herein before expressed to the contrary notwithstanding, and the holder or holders may immediately reimburse themselves by the sale of the security; and it is hereby agreed that the holder or holders of this note, or any person in his or their behalf, may purchase at any such sale.

JOSEPH W. SMITH.

[Indorsed on back]: Waiving demand and notice.

GEO. W. DOVE.

Jan. 3, 1889—Received five thousand dollars.

Jan. 5, 1889—Received five thousand dollars.

The further facts sufficiently appear in the opinion.

Justice HOLMES delivered the opinion of the court :

This is a bill to redeem certain stock given by one Smith, the plaintiff's insolvent, to the defendant as collateral security for a loan to Smith. The main question is whether the defendant can hold the stock as security not only for the loan mentioned, but also for two acceptances of a firm of which Smith was a member, which acceptances the defendant had discounted before the date of the loan in question. The note given by Smith for the loan authorizes the defendant to sell the stock "on the non-performance of this promise, said bank applying the net proceeds to the payment of this note and accounting to me for the surplus, if any." It then goes on, and these are the important words, "and it is hereby agreed that such surplus, or any excess of collaterals upon this note, shall be applicable to any other note or claim against me held by said bank."

The counsel for the plaintiff based his argument on the proposition that the right to apply the excess of collaterals to any other note or claim was conditional upon Smith's non-performance of his promise. We think it doubtful, at least, whether that is the true construction of the words which we have quoted. We are disposed to read the agreement as an absolute pledge or mortgage of the securities for other notes and claims. But if this be not so we are of opinion that Smith did not perform his promise within the meaning of the note. The bank demanded payment of Smith on January 3, 1889, and he made partial payments, but failed to pay the residue and requested the bank to make the balance a time loan, which the bank refused. This was a non-performance of his promise by Smith. It is true that the report states that it was understood that the demand should not be pressed without further notice. But this did not take away the effect of the breach. It merely called on the bank to give notice before taking further steps, such as selling the security, and this it did. We neither construe the report as meaning, nor do we infer from it, that the breach of Smith's promise by his failure to pay on demand was waived by the bank. On January 3, if not before, the bank's right vested to apply any excess of collaterals upon other claims.

The question remains whether the bank is entitled to hold the security for the bills, which were accepted by Smith's firm and not by him individually. It cannot be denied that the acceptances were "claims against him," and that the words used in his note were broad enough to embrace firm acceptances unless there is some reason in the contract, the circumstances, or mercantile practice, to give them a narrower meaning. *Singer Mfg. Co. v. Allen*, 122 Mass., 467; *Chuck v. Freen, Mood. & M.*, 259.

If Smith had had private dealings and a private account with the bank as a depositor, and his firm also had had dealings and an account there, and Smith had given security in the terms of his note, in order to be allowed to overdraw or to obtain a discount, it may be that the generality of the language would be restrained to the line of dealings in the course of which it is used. *Ex parte McKenna (City Bank Case)*, 3 DeG. F. & J., 529. See *Lindley*, Part., 5th ed., 119, note.

But we are called on to construe a printed form used by the bank and presented by it for those who borrow from it to sign. The question is, what is the reasonable interpretation of such words when insisted on as a general for-

mula to be used by would-be borrowers, irrespective of any special course of business of the particular person who signs it, which, for the matter of that, there does not appear to have been in this case. For all that appears, the note mentioned may have been the only transaction that ever took place between the defendant and the plaintiff alone. The printed form, it may be assumed, would have been used by the bank equally in a case where the borrower was the principal man in his firm and the only one known to the bank, was borrowing for himself but in this instance, and in a case where the borrower's membership in a firm whose notes the bank held was unknown. This being so in the opinion of a majority of the court, there is no sufficient reason for not giving the words their full legal effect. The clause pledging the property for any other claim against the debtor is not inserted with a view to certain specific debts, but as a drag-net to make sure that whatever comes to the creditor's hand shall be held by the latter until its claims are satisfied. *Corey on Accounts* and *Lindley on Partnership* have made it popular to refer to a mercantile distinction between the firm and its members. But we have no doubt that our merchants are perfectly aware that claims against their firms are claims against them, and when a merchant gives security for any claim against him, and there is nothing to cut down the literal meaning of the words he must be taken to include claims against him as partner.

Decree accordingly. *Bill dismissed.*

Contracts Not to be Performed Within the Year.

The common impression seems to prevail that if a contract of service is entered into verbally which is to last for more than a year, no valid relationship, out of which an action can arise, exists between the parties. This is supposed to be the doctrine established by *Britain v. Rossiter*, 40 L. T. Rep. N. S. 240; 11 Q. B. Div. 123; but when that case is looked at it will be seen that it does not lay down anything of the kind. The plaintiff entered into the defendant's service for one year. The final arrangement was made on a Saturday, and the plaintiff entered upon the defendant's service upon the following Monday. The plaintiff remained some months in the defendant's service, and was then dismissed with a three months' notice. It was held that the contract, being one not to be performed within the year and unenforceable because not in writing, no

other contract could be implied during its currency from the relations between the parties.

It would be manifestly absurd to say that, if a service is commenced by a parol agreement, which cannot be enforced owing to the Statute of Frauds, no fresh contract can be implied from a continuance of the relationship created by that contract. If that were so, it would follow that, if a man were engaged verbally as a servant for thirteen months, and he continued in the employment for ten years at an annual salary, he could be dismissed without notice, simply on the suggestion that no action could be brought on the original contract for thirteen months.

All lawyers are familiar with the doctrine of part performance to take a case out of the statute, and they know what efforts have been made to extant this doctrine to contracts, other than those affecting interests in land; those efforts have been hitherto unsuccessful, but the view of the courts on this head of law does not prove at all that a fresh contract cannot be implied from circumstances arising after the expiration of a contract not in writing, and not to be performed within the year. We should say that this is quite plain at common law, but it is abundantly clear on principles of equity. Probably few have given their attention to what is said by Lord Selborne, when Lord Chancellor, in the case of *Madison v. Alderson*, 49 L. T. Rep. N. S. 303; 8 App. Cas. 473, which points to an equitable application of the *res gestæ*.

He says: "It is not arbitrary or unreasonable to hold that, when the statute says that no action is to be brought to charge any person upon a contract concerning land, it has in view the simple case in which he is charged upon the contract only and not that in which there are equities resulting from *res gestæ*, subsequent to and arising out of the contract. So long as the connection of those *res gestæ* with the alleged contract does not depend upon mere parol testimony, but is reasonably to be inferred from the *res gestæ* themselves, justice seems to require some such limitation of the scope of the statute, which might otherwise interpose an obstacle even to the rectification of material errors, however clearly proved, in an executed conveyance founded upon an unsigned agreement.—

The Law Times, Eng.

GARNISHMENT—Property in Hands of Benevolent Association Subject to.—Money paid to the treasurers of a benevolent association, upon assessments, who are bound to make monthly returns of such payments, is held by them as trustees for the association, and is subject to garnishment as its property. Supreme Court of Rhode Island, Aug. 1, 1891, *Jepson v. Fraternal Alliance*, 23 Atl. Rep., 15.

Supreme Court of Michigan.

PEOPLE OF THE STATE OF MICHIGAN.

v.

JOHN JOHNSON, APPELLANT.

1. Being intoxicated and yelling on the public streets of a village in such a manner as to disturb the good order and tranquility is a breach of the peace.
2. An officer has no authority to make an arrest without a warrant for a breach of the peace committed when he was out of sight on another street 150 feet away although the disturbance was heard by him.
3. A conviction for resisting an officer in arresting the defendant for breach of the peace without a warrant cannot be sustained on appeal by the claim that defendant was liable to arrest for being intoxicated in a public street.

Decided May 21, 1891.

EXCEPTIONS by defendant to rulings of the Circuit Court for Mackinac County made during the trial of a prosecution against him for resisting an officer, which resulted in a verdict of guilty. *Reversed*.

THE FACTS are stated in the opinion.

Chief Justice CHAMPLIN delivered the opinion of the Court:

Main street, in the village of Naubinway, Mackinac County, runs east and west. A street runs north from Main street, upon which is located the house of one Bruce. Between 9 and 10 o'clock of the 28th day of December, 1890, as the respondent, John Johnson, and one McAllister were walking along Main street, Johnson "shouted" or "whooped" in a loud voice twice. The shout was heard by Frank Murray who was marshal of the village, and who was at the time standing upon the doorstep of Mr. Bruce's house. He started towards Main street, and proceeded down that street until he came to Johnson and McAllister, and asked, "Who done that hollering?" and McAllister replied that it was Johnson, and he then arrested him for it, and attempted to take him to the jail or lockup. Johnson resisted, and Murray used his club, and sent for Deputy Sheriff Lull, whereupon they handcuffed Johnson and dragged him to the jail. It is not necessary in this action to describe or comment upon the conduct of Murray while taking his prisoner to the jail, and after they arrived there. The prosecuting attorney filed an information against Johnson "for resisting the officer, Frank Murray, while in the lawful execution of the duties of his office in attempting to arrest him, the said Johnson, for then and there being drunk, intoxicated, disorderly, and yelling, and disturbing the public peace, in the public streets of the village of Naubinway in the presence of him, the said Frank

Murray, he, the said Frank Murray, being then and there engaged in his lawful attempts to maintain, preserve, and keep the peace," etc. Upon trial Johnson was convicted. There was a conflict of testimony as to what occurred at the time of the arrest, but in the rulings here made we have taken the testimony of the people as that upon which the conviction must stand if it can be supported. By Murray's testimony he was over 150 feet away, and upon another street, when he heard the shout. There is no testimony showing that he was in sight of Johnson and McAllister, nor that he knew who it was who shouted, but based his arrest upon the statement of McAllister that it was Johnson. There was not any riot, noise, or disturbance when he reached them. No other persons are shown to have been upon Main street when Murray first accosted Johnson and McAllister. He had no warrant for the arrest of either Johnson or McAllister. Under the facts above stated two questions are raised: (1) Did Johnson, by the act of "shouting" or "whooping" in the public street of the village when on his way home, accompanied by McAllister, at the time of night stated, commit a breach of the peace? (2) If yes, was the offense committed in the presence of the officer, Murray?

We have had occasion to define the substance and nature of this offense in the following cases: Quinn v. Heisel, 40 Mich., 576; Way's Case, 41 Mich., 299; People v. Bartz, 53 Mich., 495; Davis v. Burgess, 54 Mich., 514; Robinson v. Miner, 68 Mich., 549; Ware v. Loveridge, 75 Mich., 492.

In general terms the offense is a violation of public order, a disturbance of the public tranquility, by any act or conduct inciting to violence, or tending to provoke or excite others to break the peace. Each case where the offense is charged must depend upon the time, place and circumstances of the act. The circuit judge instructed the jury that "to be intoxicated and yelling on the public streets of a village in such a manner as to disturb the good order and tranquility of that village would be an act of open violence, and would be a breach of the peace, which, if committed in the presence of an officer, would justify him in making an arrest." This was a correct statement of the law, and was applicable, under the testimony in this case. Hawley, Arrest, 38; Moseley v. State, 23 Tex. App., 409; State v. Lafferty, 5 Harr. (Del.), 491; Bryan v. Bates, 15 Ill., 87; State v. Freeman, 86 N. C., 683; City Council v. Payne, 2 Nott & McC., 475; State v. Bowen, 17 S. C., 58. (2) Was the offense committed in the presence

of the officer, Murray, so as to authorize him to make the arrest without a warrant? To restate the facts: Johnson was not in the view of the officer. He did not know who it was that raised the shout. He arrived at the place after the occurrence, and inquired, "Who done that hollering?" and was told by McAllister that it was Johnson, and he then arrested him. At that time Johnson was not engaged in making any noise or disturbance. At the time the officer heard the shout he was over 150 feet away, upon another street. It was not in his presence, and when he arrived there was perfect tranquility. To authorize an arrest without a warrant the offense must be committed in the presence of the officer, and the arrest must be made immediately. The officer did not act upon his own knowledge, but upon information he had gained by inquiries from McAllister. If he could make the arrest under such circumstances without a warrant, then there is no reason why he could not have made it the next day, or a week after, upon inquiry and information that Johnson was the person whom he heard shouting. People vs. Bartz, 53 Mich., 493, is cited as supporting the proposition that the offense was committed in the presence of Murray. The facts in that case were different from the facts in this. In that case the officer who made the arrest saw the flash made when the pistol was discharged, heard the report, and saw the respondent Bartz, and pursued and arrested him. Bartz had not been out of sight of the officer from the time he discharged the pistol until the officer overtook and arrested him.

It is claimed by counsel for the people that Johnson, being intoxicated in a public street, was liable to be arrested therefor without warrant, under Section 1, Act No. 4, Pub. Acts, 1887, and Section 2893, How. Stat. But this position is one taken in this court for the first time. The case was tried below upon the charge and theory that Murray made the arrest for a breach of the peace. The officer made the arrest for that offense, as is apparent from his inquiry of Mr. McAllister. He did not inform Johnson that he arrested him for being intoxicated, and does not testify that he was intoxicated. McAllister is the only one that testified that Johnson was intoxicated, and that he was taking him home. The judge put the case to the jury upon the theory that the arrest was made for committing a breach of the peace, and the people will not be permitted, after trial and conviction of respondent upon that theory, to change ground, and claim that he was arrested for being intoxicated under the act cited.

The judgment must be reversed and the prisoner discharged.

The other Justices concurred.

Court of Appeals of Kentucky.

BROCK v. COMMONWEALTH.

Homicide—Dying declarations in favor of defendant.—On a trial for homicide, the testimony showed that defendant shot deceased just after the latter had committed an unwarranted assault on a third person, and, as defendant's evidence showed, just as deceased was in the act of drawing a pistol on defendant. Held, that declarations made by deceased just before his death, two days after the shooting, that he brought on the difficulty himself, and that he was wholly to blame, were admissible as dying declarations in defendant's favor.

Decided Oct. 27, 1891.

Mr. Justice PRYOR delivered the opinion of the Court:

The accused, Cale Brock, was indicted in the Bell Circuit Court for the killing of Michael Saylor, and convicted of manslaughter. On his appeal we find a single error in the record that necessitates a reversal. The deceased had originated a difficulty with some negroes, and a white man by the name of Doc Daniel seems to have interfered in behalf of the negroes, and in such a manner as to excite the anger of the deceased. Daniel, while sitting on the ground near where all the parties had assembled, was approached from behind by the deceased, struck upon the head by him, and knocked senseless and kicked while in that condition. The appellant, Brock, as the testimony conduced to show, witnessing the assault made on Daniel, drew his pistol and shot the deceased, inflicting a wound that caused his death in a few days. The pistol seems to have been fired by the appellant after he had ceased to assault Daniel; but the testimony of the accused, that is to some extent corroborated by others, is to the effect that the deceased was in the act of drawing his pistol on the appellant before the latter fired. The testimony on this point is, however, conflicting, and the attempt to reconcile it is not with this court, but with the jury; and the judgment of conviction would be affirmed but for the rejection of testimony offered by the defense that we think was competent, and its exclusion prejudicial to the rights of the accused. Bingham, a witness for the defense, was sworn, and stated that he was with the deceased when he died; and the defendant offered to prove, and avowed he could prove by this witness, that when the deceased had given up all hope of recovery, he said to the witness that he (deceased) was wholly to blame for the difficulty, and brought on the trouble himself, and did not want the accused prosecuted. This the court said was not competent. It was certainly not competent as a part of the *res gestae*, the words

having been spoken several days after the shooting; but it was competent as a dying declaration. Such declarations can be received as evidence as well for the prisoner as against him, and, while a mere opinion or belief as to which of the parties were in fault would be incompetent, facts that the witness could testify to if alive would be admissible. The dying declaration is to the effect that the deceased brought on the difficulty, and whether he alluded to the origin of the difficulty with Daniel, or to the attempt to draw the pistol on the accused, was a question for the jury to determine; but, as said by Mr. Russell in his work on Crimes (5th ed.), a declaration in favor of the accused by the dying man would not likely be made if untrue. The probability of its truth would be greater as his hostility towards the accused, by reason of the injury inflicted, might even control his declarations, even in his dying moments. In the case of *Raney v. Com.*, 5 Ky. Law Rep., —, the deceased, when *in extremis*, declared "that he brought it on himself. He alone was to blame; I brought it all about myself." This court held that the statements of the deceased were admissible as dying declarations, as they conduced to show that the deceased was the aggressor. At least, the weight and credit to be given this character of testimony is with the jury. It goes to them as other evidence, and upon the whole testimony they determine the guilt or innocence of the accused, and before a conviction can be had they must believe him guilty beyond a reasonable doubt.

For the error indicated the judgment is reversed, and remanded for proceedings consistent with this opinion.

Breach of Contract in Partial Restraint of Trade—Remedy at Law Held Sufficient.

In *Martin v. Murphy*, decided in the Supreme Court of Indiana in November, 1891, it appeared that an agreement was made between two physicians by which one of them bound himself "to practice medicine no more in Salem after January 1, 1888." The contract also named a sum as stipulated damages in case of its breach. The court held that the agreement was not unreasonable and illegally in restraint of trade, and further that an injunction would not lie, because, on account of the provision for stipulated damages, plaintiff's remedy at law would have been adequate. The following is from the opinion :

"We think the position of the appellee, with reference to the first paragraph, is well taken. Generally, one who shows the violation of a

valid contract between him and another, binding the other not to pursue a given occupation, and shows that by such violation of contract he is injured, is entitled to an injunction restraining the offending party. This is upon the ground that, from the nature of such a case, just and adequate damages cannot be estimated for a breach of the covenant. *Baker v. Pottmeyer*, 75 Ind., 451-460. The parties to such a contract may, however, by its terms, agree upon stipulated damages, which may be recovered for a breach of its conditions, instead of leaving that question open, uncertain and undetermined. When it appears that they have thus agreed upon the damages wh'ch may be recovered for a breach of the contract, the remedy is the recovery of the sum thus fixed. *Johnson v. Gwinn*, 100 Ind., 466; *Duffy v. Shockey*, 11 Ind., 70. Where the party complaining has an adequate legal remedy, injunction will not lie. *Plough v. Boyer*, 38 Ind., 113; *Sims v. City of Frankfort*, 79 Ind., 447; *Hendricks v. Gilchrist*, 76 Ind., 369; *Rickets v. Spraker*, 77 Ind., 371; *Caskey v. City of Greensburgh*, 78 Ind., 233. The sum fixed by the parties themselves in this contract will, in the absence of fraud, be deemed to be adequate and the proper measure of damages by the courts. See *Dakin v. Williams*, 17 Wend., 447.

"The second paragraph of the complaint presents a very different question, and requires for its solution that we construe the contract and pass upon its validity. The objection that it is not sufficiently specific as to time is not tenable. Murphy agrees 'to practice medicine no more in Salem after January 1st, 1888.' This is an agreement that he will never again practice medicine in Salem, and covers all time thereafter. This, appellee says, however, is unreasonable, and is a greater restraint than is necessary for the protection of the party, and is for that reason void. A contract for the general restraint of any business is illegal, but is otherwise if the restraint is reasonable and partial. Whether in a given case the restraint is reasonable is a question for the court. *Bowser v. Bliss*, 7 Blackf., 344; *Beard v. Dennis*, 6 Ind., 200. A contract, reasonably limited as to the territory in which the specific business is not to be carried on, is not rendered invalid because the restriction as to time is indefinite or general. *Bowser v. Bliss*, supra; *Beard v. Dennis*, supra; *Alger v. Thatcher*, 19 Pick., 51; *Smalley v. Greene*, 52 Iowa, 241, 3 N. W. Rep., 78.

New York Court of Appeals.

(SECOND DIVISION.)

PHOEBE A. GREENE, RESPONDENT,

v.

PETER COUSE, APPELLANT.

A defendant in ejectment is not estopped to set up adverse possession by the fact that his grantor, after setting up the same defense in a prior action, had settled it by buying the plaintiff's title and giving his notes for the purchase price, and that the same plaintiff has brought a second action after a default in payment of the notes.

Decided June 25, 1891.

APPEAL by defendant from a judgment of the General Term of the Supreme Court, Fourth Department, affirming a judgment of the Circuit Court for Delaware County in favor of plaintiff in an action brought to recover possession of certain real estate. *Reversed*.

THE FACTS sufficiently appear in the opinion.

Mr. Justice POTTER delivered the opinion of the court:

The action is ejectment, and was brought to recover possession of an undivided one-twelfth part of the premises described in the complaint. The answer was a denial of the complaint; also title in the defendant; also title in the defendant arising from adverse possession of the premises for more than twenty years, and a counter-claim. The premises as claimed in the complaint consist of 100 acres in the N. W. corner of the E. $\frac{1}{2}$ of Great lot No. 24, Evans' Patent, in Delaware County. It was stipulated by the defendant, for the purposes of this appeal, that the plaintiff showed title in herself as one of the heirs at law of Martha Bradstreet, deceased, to an undivided one-twelfth of the premises in question, except as such title may have been defeated by the adverse holding of the defendant herein, and his predecessors, or parted with by force of the agreement of date March 5, 1875, hereinafter set forth. The plaintiff proved and read in evidence an instrument, of which the following is a copy: "Received from A. Couse his note of \$400 for the purchase price, with costs of suits, of an undivided two-thirds interest in 100 acres in the northwest corner of Great lot 24, Evans' Patent, known as the 'Wild Lot,' and being the same premises claimed to have been occupied by the said Couse for some years past; and I agree to forward to said Couse by mail, within ten days, a deed therefor. W. Youmans, Attorney for Bradstreet Heirs. Dated Delhi, N. Y., March 5, 1875,"—proved that the land therein mentioned was that in dispute; also gave evidence that the

note had not been paid, and the recovery of a judgment upon the note which had not been paid. The defendant examined his grantor at considerable length to prove the defense of adverse possession of the premises, and that the defendant entered into the possession under a deed from his father, Alexander Couse, in 1882, who entered into the possession of the premises in 1849, under a deed from his father, Peter Couse, sr., who some years before entered into possession under a written title from Joseph Nutter, and that such occupation had been continuous for over forty years, and none of the occupants had entered into possession under plaintiff, or anyone from whom plaintiff derived title, and was proceeding with the examination of other witnesses upon that subject, when the court ruled as follows:

"THE COURT: I think I must stop this evidence. You must make some other defense than the Statute of Limitations, or I must direct a verdict against you. The more I think of this question, the more I think the Statute of Limitations cannot prevail here." Defendant's counsel duly excepted to such ruling and decisions. "The court rules that under the contract of March 5, 1875, and the note of \$400 given therefor, and the various stipulations and contracts in connection with that, this defendant has lost his right to avail himself of the adverse possession of himself and of his predecessors, and declines to receive any further evidence of occupation and of adverse possession by the defendant and his predecessors." To which ruling and decision the defendant's counsel duly excepted.

After some additional evidence upon the part of the plaintiff in relation to a subsequent arrangement as to the time and condition of delivery of the deed and payment of the purchase price the court directed a verdict for plaintiff, to which defendant excepted. When the defendant was thus precluded from giving further evidence on the subject, that already given tended to prove title by adverse possession in the defendant's grantor at the time such instrument of March 5, 1875, was made. And there was presented a question of fact for the jury in that respect; and title so established may be as effectual as that created in any other manner for the purposes of remedy or defense founded upon it. Barnes v. Light, 116 N. Y., 34, and cases there cited. Upon this state of facts the question is presented whether the defendant should have been precluded or estopped from proving the defense of title to the premises by adverse possession. The plaintiff and Alexan-

der Couse, at the time such contract was made, respectively claimed to be the owner of the premises; and for the purposes of the question it may here be assumed that Alexander Couse and his grantor had been in the actual and continuous possession of the premises for forty or more years, and the plaintiff, and those under whom she claimed, had not during that period, if ever, been in the actual possession, and that the said defendant, nor any of his grantors, had ever entered into or retained possession of the premises with any permission of or privity with the plaintiff or her predecessors in title. In the absence of any of these relations the defendant and his grantors owed no duty or obligation to the plaintiff, and was therefore at liberty to fortify his title or purchase peace at any price and of whomsoever he chose. If, however, the adverse possession of the defendant's grantor, and those under whom he entered and claimed, had not ripened into a title at the time the contract of March, 1875, was made, the right to assert the continuance thereafter of such possession to perfect and support title as against the plaintiff would have been defeated by it. I am aware of the rule that where a lessee or vendee enters into possession of premises under a lease or contract he cannot, while he remains in possession, dispute the title of the lessor or vendor, but this case is lacking in the essential element which creates such estoppel. Neither the defendant nor his grantors entered into the possession by any manner of consent or contractual relation with the plaintiff or her ancestors or grantors. The rule in relation to estoppel does not apply "where, at the time of the purchase, the vendee is in as owner, claiming title, and his entry was not under the vendor." Glen v. Gibson, 9 Barb., 634-640.

Where a man is in possession of land as owner, having title, he is at liberty to purchase the land over again as often as claimants shall appear who are not in possession, and thus quiet such claims and fortify his title, without being estopped from disputing the title of such subsequent vendors, should it afterwards become necessary for him to do so." Jackson v. Leek, 12 Wend., 105; Bain v. Matteson, 54 N. Y., 666. Even in a consummated purchase the grantee in fee may purchase in an outstanding title hostile to his grantor, and fortify his own defective title. Kenada v. Gardner, 3 Barb., 589. In Watkins v. Holman, 41 U. S., 16 Pet., 54, 10 L. Ed., 885, it is said by the court in discussing such relations, that "the relation of landlord and tenant in no sense exists between the vendor and

vendee." Judge Bronson, in delivering the opinion of the court in *Osterhaut v. Shoemaker*, 3 Hill, 514-518, says: "The grantee takes the land to hold for himself, and to dispose of it at his pleasure. He owes no faith or allegiance to the grantor, and he does him no wrong when he treats him as an utter stranger to the title."

These views lead to the conclusion that the exceptions before mentioned were well taken, and require a new trial.

Judgment should be reversed, and a new trial granted, with costs to abide the event.

All concur, except Haight and Parker, JJ., dissenting, and Follett, Ch. J., not sitting.

HAIGHT, J., dissenting:

This is an action of ejectment to recover an undivided one-twelfth part of the lands described in the complaint. The defense is adverse possession. It appears by the stipulation of the parties that "the plaintiff showed title in herself, as one of the heirs at law of Martha Bradstreet, deceased, to an undivided one-twelfth of the premises in question except as such title may have been defeated by the adverse holding of the defendant herein and his predecessors, or parted with by force of an agreement between W. Youmans, attorney for the Bradstreet heirs, and Alexander Couse, dated March 5, 1875." It appears that on the 2d day of January, 1874, one Alexander Couse was in possession of the lands in question, and that on that day the plaintiff, with others, known as the "Bradstreet heirs," brought actions through W. Youmans, their attorney, against him in ejectment, for the lands in question; that thereafter, and on the 5th day of March, 1875, an agreement was entered into between the parties, by which the actions were settled and discontinued, he agreeing to purchase the interests of the plaintiffs in the premises at a stipulated price, giving his note therefor, and they agreeing to deliver him a deed therefor within ten days. This agreement was subsequently modified so as to provide that the deed should be delivered upon the payment of the note. The note, although long past due, has never been paid. It further appears that on the 7th day of February, 1882, Alexander Couse quitclaimed the lands in question to his son, the defendant in this action, who thereupon entered into possession, and now claims to hold the same adversely to the plaintiff. The question thus presented for review is as to whether he can avail himself of that defense.

I shall not question the doctrine that one holding adversely, and defending upon that ground, may purchase of a third person an

outstanding title to support his own, whether he doubts the validity of his previous title or not, and that such purchase will not affect his right to defend under his claim of adverse possession. But a very different question is presented by the facts under consideration. As we have seen, the plaintiff's record title is conceded. In 1874 she brought an action in ejectment to recover the possession of the premises or of her interest therein, and that action was settled and discontinued, the defendant therein agreeing to purchase her interest in the premises. By such settlement and agreement the defendant in that action not only admitted and recognized her title and right to recover, but also waived his right or claim of adverse possession, and his possession in the premises thereafter must be deemed to be under the contract of purchase. By such agreement the plaintiff was induced to discontinue her action, and thus forego the establishing of her title by judicial decree. This action was brought eight years afterwards, and if the defendant is now permitted to avail himself of the defense of adverse possession he may now be able to prove and establish that which he could not have done eight years ago. He may thus be permitted to establish a defense, in consequence of the agreement and a breach thereof, which could not have been maintained had the settlement and agreement not been made. This cannot be allowed under the well settled principles of estoppel. The agreement placed the plaintiff in a position where she could not maintain an action to oust the defendant's grantor until he had made a breach in his contract to purchase. The defendant gets no greater or better title than his father had, and if the defense was not available to the father it would not be to the son. There is no claim of fraud or deception in making the contract.

Sedgwick & Wait, in their treatise on "Trial of Title to Lands," at section 317, say: "When a person in possession of lands covenants with another to pay him for the land, he thereby acknowledges the title of the vendor, and is estopped from setting up an outstanding title or title in himself unless he can show that he was deceived or imposed upon in making the agreement."

In *Jackson v. Ayers*, 14 Johns., 224, where the defendant was in possession of land, and had agreed with the plaintiff to purchase and pay him therefor, it was held in a subsequent action of ejectment that the defendant was estopped from setting up a title by adverse possession in himself. In the case of *Jackson v. Britton*, 4

Wend., 507, it was held that, while an offer to purchase land by a party having title does not impair or affect his right, it, however, bars the defense of adverse possession. In *Corning v. Troy L & N. Factory*, 34 Barb., 485-489, Hogeboom, J., in delivering the opinion of the court, says: "Nor could they during the same period continue an adverse possession previously commenced. By taking a lease from the De Freests they acknowledged their title and right to convey. They held under this title, and recognized it as the true title. They must be deemed to have waived any previous imperfect rights which they had already acquired under a prior incipient adverse possession. The doctrine of cumulative disabilities does not apply. The defendants are prevented from setting up during this period an adverse possession, not for the reason that they could not purchase an outstanding title for the purpose of perfecting their right or quieting their possession, but because by taking a lease from the De Freests they have placed the latter under a disability, in a position where they cannot take proceedings to oust the defendants, and of course where the Statute of Limitations should not be permitted to run against them. It would seem, therefore, entirely clear that, as this lease did not expire until 1852, the defendants cannot avail themselves of the defense of adverse possession." In *Jackson v. Cuerden*, 2 John. Cas., 353, the defendant wrote a letter to one Mary Clarke, the plaintiff's lessor, in which he offered to purchase of her lands of which he was then in possession. Subsequently, and in an action of ejectment, he offered to give evidence of more than twenty years' adverse possession in himself. This was excluded by the trial judge. On review it was held that the letter of the defendant was sufficient *prima facie* for the plaintiff to recover; that while the defendant was not precluded from showing that he grounded his letter on a mistake, he was precluded from setting up adverse possession or Statute of Limitations; that the acknowledgment in his letter takes away the Statute. See, also, *Jackson v. Spear*, 7 Wend., 401; *Fosgate v. Herkimer Mfg. & Hydraulic Co.*, 12 Barb., 352-356; *Tompkins v. Snow*, 63 Barb., 525-533; *Jackson v. Walker*, 7 Cow., 637-642; *Sayles v. Smith*, 12 Wend., 57; *Ingraham v. Baldwin*, 9 N. Y., 45-47; *Smith v. Babcock*, 36 N. Y., 167, 168; *McMath v. Teel*, 64 Ga., 595; *Garlington v. Copeland*, 32 S. C., 57-67; 7 Am. & Eng. Encyclop. Law, 32, title, *Estopel*.

As we have seen, the suit were settled and discontinued, and this furnished a good consideration for the agreement which thenceforth became binding upon the parties. Their rights were fixed by it, and the party in default cannot now go back and litigate questions that were disposed of in the settlement. Again, it appears that an action was brought upon the note given by Alexander Couse, and that he interposed the defense that it was given for the purchase price of the lands in question, and that the plaintiff had committed a breach of the contract in failing to deliver the deed in accordance with the terms of the contract. Upon this issue the plaintiff had judgment, thus forever

disposing of the facts that the contract of purchase was made, and that there was no breach thereof on the part of the plaintiff.

The judgment should be affirmed.
Parker, J., concurs.

STOCKHOLDERS in The Law Reporter Company of Washington City will take notice that an election for the purpose of choosing nine trustees will be held at the office of the Company, 503 E St., N. W., on Monday, February 8, 1892; polls to be open from 1 to 3 o'clock p. m.

B. F. LEIGHTON, Secretary.

Rule of Court.

RULE 20. * * * * Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

Legal Notices.

FIRST INSERTION.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 1st day of February, 1892.

Henry Hannah, Assignee,

vs.

A. S. Butler, and unknown heirs of George Augustus Butler.

No. 12,612. Equity Docket 33.

On motion of the plaintiff, by Mr. Frank W. Hackett their solicitor, it is ordered that the defendants, the unknown heirs of GEORGE AUGUSTUS BUTLER, late of Washington, in this District, deceased, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to sell certain real estate in this District, to wit: a lot in square eighty (80) in the city of Washington, of which the said George Augustus Butler, who recently died in China, died seized, and to pay from the proceeds a claim of the plaintiff, equitably secured on said real estate.

This notice is to be published once a week for three weeks in the Washington Law Reporter and The Evening Star before said day.

By the Court. A. B. HAGNER, Justice, &c.
A true copy. Test: J. R. Young, Clerk, &c.
By L. P. Williams, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

On the 4th day of February, 1892.

Wm. R. Davis

vs. No. 12,658. Eq. Docket 33.

Catherine Davis.

On motion of the plaintiff, by Mr. Samuel H. Lewis, his solicitor, it is ordered that the defendant, CATHERINE DAVIS, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce a *vinculo matrimonii* for desertion.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
By M. A. Clancy, Asst. Clerk.

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters Testamentary on the personal estate of ELIZABETH B. DYPER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereto, to the subscriber, on or before the 1st day of February, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day of February, 1892.
ANSON F. TAYLOR,
5 Care Samuel Maddox, Proctor, 463 L. Ave.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters Testamentary on the personal estate of FREDERICK W. SCHOPPER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 30th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of January, 1892.
GEORGE SCHEUCH,
5 Leon Tobriner, Proctor. 801 Md. Ave., n. e.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business.
January 29th, 1892.

In the matter of the Estate of SOPHIE OBERHEIM, late of the District of Columbia, deceased.

Application for the Probate of the last Will and for Letters Testamentary on the Estate of the said deceased, has this day been made by John Oberheim.

All persons interested are hereby notified to appear in this Court on Friday, the 26th day of February, next, at one (1) o'clock P. M., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Washington Post previous to the said day.

By the Court. A. B. HAGNER, Justice,
Test: L. P. WRIGHT,
5 No. 4801. Ad. Doc. 17. Chapin Brown, Proctor.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of PAUL BALL, late of the District of Columbia, deceased; on the 6th day of January, A. D. 1892.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 11th day of August, 1892, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of January, 1892.
ANNA MARIA BALL,
5 Eugene J. B. O'Neill, Proctor. 1213 G St. n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters of Administration on the personal estate of ELIZA-BETH P. SMITH, late of the District of Columbia deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of January, 1892.
MINNIE B. HEARD,
5 Irwin B. Linton, Proctor. 1344 Vermont Ave.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business,
January 29th, 1892.

In the case of Thomas E. Wagaman, Administrator, c.t.a. of LIZZIE MAHON, deceased, the Administrator c.t.a. aforesaid has, with the approval of the Court, appointed Friday, the 4th day of March, A. D. 1892, at 11 o'clock a.m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administratrix c.t.a. will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
5 No. 414. Ad. Doc. 16. Irving Williamson, Proctor.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

The 4th day of February, 1892.

Charlotte M. Swails
vs. No. 13,659. Eq. Docket 38.
Stephen A. Swails et al.

On motion of the plaintiff, by Messrs. John H. Smythe, and E. M. Hewlett, her solicitors it is ordered that the defendants, JOHANNA SWAILS, RACHEL JONES, JOHN W. JONES, HENRIETTA DENNING, CHARLES DENNING, CATHERINE LUSH, and PETEE LUSH, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for the appointment of a trustee with power to convey, part of lot "H" in Sq. 157, in the District of Columbia (the title to which is now in the name of Jessie A. Swails), to Charlotte M. Swails.

By the Court. A. B. HAGNER, Justice, &c.
A true copy. Test: J. R. Young, Clerk, &c.
By M. A. Clancy, Asst. Clerk.

This is to Give Notice

That the subscribers of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters Testamentary on the personal estate of GEORGE W. GIST, late of the District of Columbia, deceased.

All persons having claims against the said deceased, are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 2d day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 2d day of February, 1892.
IVORY G. KIMBALL,
MARY S. GIST,

5 Joseph J. Darlington, Proctor. 1341 F St.

SECOND INSERTION.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of WILLIAM M. REEDLAND, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of January, 1892.
CHAS. R. SMITH,
611 Q St. n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of SARAH HENRY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of January, 1892.
WILLIAM COCHRAN,
4 Edwards & Barnard, Proctors. 465 F St. Southwest.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of MARY DORSEY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23d day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23d day of January, 1892.
CALVIN T. S. BRENT,
4 Jas. H. Smith, Proctor. 1038 18th St. n. w.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of MARY L. HARTLEY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 22d day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of January, 1892.

EDWIN BRADFIELD HARTLEY,

4 Henry S. Matthews, Proctor. 78 Myrtle Ave.
Montclair, N. J.

This is to Give Notice

That the subscribers, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of MOSES T. BRIDWELL, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscribers, on or before the 15th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 15th day of January, 1892.

ANDREW A. LIPSCOMB,
Mertz Building, 11th and F. n. w.
4 JOB BARNARD, 500 5th St. n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters of Testamentary, on the personal estate of CHARLES X. MARTIN, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 22d day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of January, 1892.

IRVIN B. LINTON,
4 Irwin B. Linton, 1534 9th St. n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of EDWARD J. SHORT, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 25th day January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of January, 1892.

JOSEPH C. JOHNSON,
4 E. M. Spaulding, Proctor. 64 Corcoran Building.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 26th day of January, 1892.

The Gottschalk Company of
Baltimore, Md. vs. James P. Garrity et al. No. 11,628. Eq. Docket.

On motion of the plaintiff, by Mr. S. T. Thomas, its solicitor, it is ordered that the defendants, IDA V. GARRITY, CORA GARRITY, FLORENCE GARRITY and WILLIAM GARRITY, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to subject the equitable interests of the defendants in sub lot 8, in square 315, in Washington, D. C., to the payment of a certain judgment at law, numbered 29,364 in said cause in favor of the said Gottschalks Company against the above named James P. Garrity, for the sum of \$1,449.06 interest and costs.

A. B. HAGNER.

True copy. Test:

J. R. Young, Clerk, &c.

4 By M. A. Clancy, Asst. Clerk.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphan's Court business, Letters Testamentary on the personal estate of CHRISTOPHER R. P. RODGERS, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 23rd day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23rd day of January, 1892.

ALEX. RODGERS.
4 James Lowndes, Proctor. 1829 Jefferson Place.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

January 25th, 1892.

In the case of John Barnard, Administrator c. t. a. of MARCUS M. WHEELOCK, deceased, the Administrator c. t. a. aforesaid, has, with the approval of the Court, appointed Friday, the 26th day of February, A. D. 1892, at 11 o'clock a. m. for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator c. t. a. will take the benefit of the law against them.

Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.

4 No. 4267. Ad. Doc. 16.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

January 22nd, 1892.

In the case of John Couper Edwards, John Lafouchere Edwards, and George Kerr Edwards, Executors of ELIZABETH R. EDWARDS, deceased, the Executors aforesaid have, with the approval of the Court, appointed Friday, the 26th day of February, A. D. 1892, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter, previous to the said day.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.

4 No. 4244. Ad. Doc. 16. Reginald Fendall, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

January 22d, 1892.

In the matter of the Estate of JANE ELIZABETH OLIVIA RHODES, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by William Joseph McCauley of the District of Columbia.

All persons interested are hereby notified to appear in this Court on Friday, the fourth day of March next, at one o'clock, p. m., to show cause why the said Will should not be proved and admitted to probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Washington Post previous to the said day.

By the Court: L. P. WRIGHT,
Register of Wills for the District of Columbia.

4 No. 4788. Ad. Doc. 17. James Hoban, Proctor.

Legal Notices**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of HENRY K. FULTON, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of January, 1892.

LAURA E. FULTON,

4 Chapin Brown, Proctor. 1514 Park St.
Mount Pleasant, Washington, D. C.

This is to Give Notice

That the subscribers, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of JAMES BRADLEY ADAMS, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 25th day of January, 1892.

BYRON S. ADAMS,

BETTIE B. SWAYZE,

4 John B. Larner, Proctor. 512 11th St. n. w.

THIRD INSERTION.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphan's Court Business, Letters of Administration on the personal estate of JAMES McMULLIN, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of January, 1892.

GEORGE J. BOND,

3 James P. McCrellis, Proctor. 623 F St. n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of SHADRACH NUGENT, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of January, 1892.

GEO. W. LINKINS,

8 19th and H Sts. n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of MARY HICKEY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 18th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of January, 1892.

MARGARET HICKEY,

8 Filmore Beall, Proctor. 100 F St. n. w.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business.**

January 15th, 1892.

In the matter of the Estate of PATRICK CONNELLY, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration, c.t.a., on the Estate of the said deceased, has this day been made by Catherine Connally.

All persons interested are hereby notified to appear in this Court on Friday, the 12th day of February, next, at 1 o'clock p. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration, c.t.a., on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
3 Ernest L. Schmidt, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 20th day of January, 1892.

Bartow L. Walker and wife
vs. { No. 13,629. Equity Docket 33.
Alverda Osburn et al.

On motion of the complainants, by Leo Simmons, their solicitor, it is ordered that the defendants, ALVERDA OSBURN, GRACE OSBURN, MASON OSBURN, DECATUR OSBURN and RICHARD OSBURN, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a decree for sale, to make partition of the property described in the bill in this cause, of which John Young died seized in Washington City.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
3 By L. P. Williams, Asst. Clerk.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.**

January 15th, 1892.

In the matter of the Estate of CARL L. WINDHOLZ, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by William A. Ruee.

All persons interested are hereby notified to appear in this Court on Friday, the 12th day of February next, at one (1) o'clock p. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER and Washington Post previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
3 No. 4773. Adm. Doc. 17. Chapin Brown, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 20th day of January, 1892.

J. H. Adriaans
vs. { No. 13,595. Equity Docket 33.
Isaac S. Lyons et al.

On motion of the complainants, by Mr. O. H. Budlong his solicitor, it is ordered that the defendant, JOHN MEREDITH, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is a sale for purposes of partition of part of lot No. 26, section 8 of Barry Farm, in the District of Columbia.

This notice to be inserted once a week for each of three successive weeks in the Washington Law Reporter and the Evening Star.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
By L. P. Williams, Asst. Clerk.

The Washington Law Reporter.

ESTABLISHED, 1874.

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WASHINGTON, D. C., - - - FEBRUARY 11, 1892

AN extreme instance of "the lawless science of the law," as Tennyson calls it, is afforded by a decision of the Supreme Court of California in the recently reported case of Pico v. Cohn—a case showing as glaring a miscarriage of justice under the forms of law as could well be met with. From the somewhat extended statement of facts given in the opinion of the court, it appears that the plaintiff, being the owner of a large tract of land in Los Angeles, and worth at the time of the transaction in question over \$200,000, and considerably more at the time of bringing the suit, found himself in severe financial straits owing to heavy encumbrances upon his property and their threatened foreclosure. To meet these demands he was forced to borrow anew. He accordingly borrowed from one Cohn the sum of \$62,000, at the same time giving as security an absolute deed of his land. Within a month or two afterwards plaintiff tendered payment and demanded a reconveyance, which was refused, whereupon he commenced suit. Cohn answered, alleging that the transaction was an absolute sale. The court found for the plaintiff, and decreed a reconveyance, but on appeal the Supreme Court, believing that other moneys had been advanced by Cohn, directed a new trial unless the plaintiff would pay to Cohn the additional sum of \$35,000. 67 Cal., 258. Plaintiff refused to consent to such modification of the decree below, and thereupon a new trial was ordered, and

here the story commences. It appears that at the first trial plaintiff put upon the witness stand one Johnson, the only person who was present at the transaction with Cohn. This witness, however, to the surprise of plaintiff, instead of testifying that the transaction was one of loan and security, swore most positively that it was an absolute purchase and conveyance; but his testimony was so riddled on cross-examination that it became plain to the court that the transaction was, as contended by plaintiff, one of loan and security. Before the second trial came on both the defendant and this witness were dead. Counsel, however, were so confident that the written transcript of Johnson's testimony at the former trial, notwithstanding its general falsity, established by the cross-examination the truth of plaintiff's contention, that they put it in evidence. Then they met with another surprise. A new judge was on the bench, and he took a different view of the testimony and found that instead of a mortgage the transaction was an absolute sale. This finding the Supreme Court affirmed notwithstanding its former judgment that the transaction was one of loan and security, the affirmance being on the ground that the evidence being conflicting the finding of the lower court could not be disturbed. Shortly after this affirmance plaintiff filed a bill to vacate the decree on the ground of newly-discovered evidence showing that Johnson had been bribed by Cohn to testify falsely as to the nature of the transaction, and that but for this false testimony the adverse decree would not have been given. To this bill a demurrer was filed and sustained by the court below, on the ground that even if it were shown that the testimony of the witness was perjured, and that the perjury had been secured by the successful party, and even though there appeared to be a reasonable certainty that on a new trial the plaintiff would succeed, yet a new trial ought not to be granted—*interest reipublicæ ut sit finis litium*. The rest of the case we take from

the opinion of the Court affirming this decree:

Without going more fully into the reasons which induced counsel for plaintiff to submit the testimony of Johnson to the consideration of the court on the second trial of the former action, we content ourselves with saying that the allegations of the complaint show that the course pursued by them was, under the circumstances, wise and proper, if not absolutely necessary. But, contrary to their expectations, the court believed his false testimony, and for that reason alone decided against the plaintiff. In support of this conclusion the complaint set out the substance of all the testimony of Cohn and Pico, and in detail the material portions of Johnson's testimony, from which, with other averments, it appears that but for Johnson's positive perjury and suppression of the truth the judgment here in question would not have been given. This being shown, it is next alleged that, after the final affirmation of that judgment by this court, plaintiff made the discovery that Cohn had paid Johnson \$2,000 to testify falsely. The particulars of this bribery and its discovery are detailed in the complaint and show that on the very morning that Johnson gave his testimony Cohn placed \$2,000 in the hands of one Forbes, with directions given in Johnson's presence to pay it to him if he testified to an absolute sale, and that, immediately after he had so testified, he demanded and received the money.

It is averred, and we think sufficiently shown, that upon proof of these facts there is a reasonable certainty that plaintiff would, upon another trial, gain his cause. Such being the case, is plaintiff entitled to a decree vacating and annulling the former decree on the ground that it was procured by fraud? After a careful and extended examination of the authorities, we are constrained to answer this question in the negative. That a former judgment or decree may be set aside and annulled for some frauds there can be no question, but it must be a fraud extrinsic or collateral to the question examined and determined in the action. And we think it is settled beyond controversy that a decree will not be vacated merely because it was obtained by forged documents or perjured testimony. The reason of this rule is that there must be an end of litigation; and when parties have once submitted a matter, or have had the opportunity of submitting it, for investigation and determination, and when they have exhausted every means for reviewing such determination in the same proceeding, it must be regarded as final

and conclusive, unless it can be shown that the jurisdiction of the court has been imposed upon, or that the prevailing party, by some extrinsic or collateral fraud, has prevented a fair submission of the controversy. What, then, is an extrinsic or collateral fraud, within the meaning of this rule?

Among the instances given in the books are such as these: Keeping the unsuccessful party away from the court by a false promise of a compromise, or purposely keeping him in ignorance of the suit; or, where an attorney fraudulently pretends to represent a party, and connives at his defeat, or, being regularly employed, corruptly sells out his client's interests. *United States v. Throckmorton*, 98 U. S., 65, 66; 25 L. ed., 95, and authorities cited. In all such instances the unsuccessful party is really prevented by the fraudulent contrivance of his adversary from having a trial; but when he has a trial he must be prepared to meet, and expose perjury then and there. He knows that a false claim of defense can be supported in no other way; that the very object of the trial is, if possible, to ascertain the truth from the conflict of the evidence, and that necessarily the truth or falsity of the testimony must be determined in deciding the issue. The trial is his opportunity for making the truth appear. If, unfortunately, he fails, being overborne by perjured testimony, and if he likewise fails to show the injustice that has been done him, on motion for a new trial, and the judgment is affirmed on appeal, he is without remedy.

The wrong, in such case, is, of course, a most grievous one, and no doubt the Legislature and the courts would be glad to redress it if a rule could be devised that would remedy the evil without producing mischiefs far worse than the evil to be remedied. Endless litigation, in which nothing was ever finally determined, would be worse than occasional miscarriages of justice; and so the rule is that a final judgment cannot be annulled merely because it can be shown to have been based on perjured testimony; for, if this could be done once, it could be done again and again, *ad infinitum*. But counsel for appellant seek to distinguish this case from those in which it has been held that a judgment will not be set aside by reason of its being based upon forged documents or perjured testimony. They say that the fraud committed by Cohn was the bribing of Johnson; that this was collateral and extrinsic; that it was not, and could not have been, the subject of investigation at the trial of the original action. We do not think this distinction can be maintained.

The fraud which Cohn committed was the production of perjured evidence in support of his defense. The means by which he induced the witness to swear falsely was but an incident. It may be safely asserted that a witness does not often deliberately perjure himself without being induced thereto by some fraudulent or corrupt practice on the part of him who gets the advantage of the perjury. It is a matter of indifference what particular form such corrupt practice takes. The evil and the wrong is in the perjury which follows. In this case the truth of Johnson's evidence was necessarily drawn in question at the trial, and determined by the decision of the court; and all that has since been discovered is another item of testimony bearing on that point. We cannot find any substantial ground upon which this case can be distinguished from *United States v. Throckmorton*, *supra*. The decision in that case has been approved by this court as recently as *Re Griffith*, 94 Cal., 113. The following decisions of this court are also in point: *Allen v. Currey*, 41 Cal., 321; *Amador O. & Min. Co. v. Mitchell*, 59 Cal., 170.

Many other authorities to the same effect are cited in the brief for respondents. On the other hand, the case of *Laithe v. McDonald*, 7 Kan., 254, 12 Kan., 340, directly supports the position of appellant, as does the case of *Fabrilius v. Cock*, 3 Burr., 1771. The cases of *Verplanck v. Van Buren*, 76 N. Y., 247, and *Dringer v. Jewett*, 42 N. J. Eq., 573, 8 Cent. Rep., 560, contain expressions which seem to imply the same doctrine, but they do not directly support it. Other cases cited by appellant are less in point.

We think, on the whole, that it is settled by the great weight of authority that the plaintiff's action cannot be maintained.

Supreme Court of the District of Columbia

IN GENERAL TERM.

ERNEST LENT

v.

HARRIET J. KERNAN.

Whether the Act of Congress of July 18, 1888, providing for the improvement and repair of alleys and sidewalks is unconstitutional and void. *Quare.*

At Law. No. 30,133. Decided November 2, 1891.

The CHIEF JUSTICE and Justices COX and JAMES sitting.

MOTION for judgment under Rule 73. *Judgment refused.*

Messrs. J. B. LARNER and W. G. REED for plaintiff.

Mr. HENRY E. DAVIS for defendant.

Mr. Justice COX delivered the opinion of the court.

This is an action brought upon a written contract of sale, by which the defendant, Mrs. Kernan, agrees to sell certain property to the plaintiff for the sum of \$3,000, and as part of the stipulation it was provided that all taxes should be paid to the date of sale. The sale was completed and the conveyance passed, and afterwards, the plaintiff alleges, that he discovered that a special tax had been assessed upon the property in question, to the amount of \$173, for the paving of an alley adjoining the premises; that he was compelled to pay that sum in order to prevent the property from being sold, and demanded repayment from the defendant, and that she refused.

The defendant files the general pleas that she did not promise as alleged, and is not indebted as set out in the declaration. There is an affidavit filed, in which the defendant sets out, in substance, that at the time of the sale she was not aware of the existence of this assessment, but, since the matter has been brought to her attention, she has discovered that the alleged tax was assessed on account of what is commonly called compulsory permit work, under the act of Congress of July 18, 1888. I might as well refer to that at once, and state what the question is. That is an appropriation act. There is an appropriation "for the improvement and repair of alleys and sidewalks and the construction of sewers under the permit system, \$90,000: Provided, that the property owners requesting such improvements shall pay one-half of the total cost: and provided further, that the Commissioners of the District of Columbia are authorized in their discretion to order such of the above enumerated work as in their opinion is necessary for the public health, safety or comfort, and to pay the total cost of such work from said appropriation, one half of the cost of such work to be charged against and become a lien upon the abutting property, and its collection to be enforced in the same manner as the collection of general taxes."

It will be observed that there are two clauses in this section. One relates to work which is done upon the request of property owners, and that provides that the property owners requesting the improvement shall pay one half of the total cost. The defendant says that she never requested that improvement, and consequently she does not come within that clause. The other clause authorizes the Commissioners to order the work done in their discretion, and she says that if it was done under that clause, she never had any notice of the proposed work, and therefore never had an opportunity of being

heard as to the cost of the work, or the propriety of having it done, or the proper proportion of the cost to be assessed, as between herself and the other property owners. The argument is, that the whole Act of Congress, as to this taxation, was absolutely void, whether notice was in fact given to the defendant or not, upon the ground that the law does not provide for any notice or any of the guarantees that ordinarily accompany the process of taking private property for public use; therefore it is taking private property without due process of law. It is a singular fact that the law does not declare in what manner the assessment shall be made, and does not provide for any notice to parties or any opportunity for them to be heard. It gives the Commissioners authority in their discretion to order the work to be done, and says that one-half of the cost of the work is to be charged against and become a lien upon the abutting property; but whether to be charged according to area, frontage or valuation is not defined.

It is said, on the part of the plaintiff, that the validity of this assessment cannot be questioned collaterally, but that it can only be done by a proceeding by way of certiorari. Whatever might be the case if it were a mere question of irregularity, no such question arises here, because it is not an irregularity that is complained of, but a total absence of authority to execute the work. That identical question occurred in New York, and came before the Supreme Court of the United States, in the case of *Spencer v. Merchant*, 100 N. Y. It was a case where the contract was made to sell property, with a covenant against all encumbrances. The vendor discovered a tax lien upon his property, as he supposed. He called upon the defendant to pay, which he refused, and then sued him for not doing it. That case came before the Supreme Court, and in that case the controversy was whether the law under which the tax was levied was not void under the constitution of New York, as in conflict with that provision which is common to that constitution and to the Constitution of the United States, viz: that nobody shall be deprived of his property, without due process of law. The question never was made whether the validity of that tax could be inquired into as between the parties.

We hardly think it necessary, at this stage of the present case, to go at length into or decide definitely the grave constitutional question, whether this law is void because it is taking private property without due process of law. The motion here is for a judgment, notwithstanding the plea. It is sufficient for us to say that the authorities cited to us in the State courts favor the contention of the defendant, and we know nothing in the decisions of the Federal courts which does not harmonize with this.

In a case in 74th New York this question is discussed at considerable length, and the court held the fact that a law of New York did not provide for a notice to the parties interested in regard to an assessment, sufficient to invalidate the law. There is a case in 65 California of the same character.

It is safe, however, for us to say that so much can be said in favor of the contention of the defendant that we would not be warranted in giving judgment upon this showing, adversely to the defendant, and we simply overrule that motion for the present.

If the question should come before us again, we will give it more deliberate consideration.

A Recent Exposition of the Law of Champerty.

In *Brown vs. Bigne*, decided by the Supreme Court of Oregon in November last (28 Pacific Reporter, 11) the only question litigated was whether the agreement between plaintiff and Bigne was champertous and therefore void. In discussing such question the court first considered the historical origin of champerty as a defense, saying, in part, as follows:

"The doctrine of champerty and maintenance, the gist of which is the same, differing only in the mode of compensation, arose from causes peculiar to the state of society in which it was established. The most potent reason for their suppression was an apprehension that justice itself would be endangered by these practices. The doctrine was established "to repress the practices of many who, when they thought they had title or right to any land for the furtherance of their pretended right, conveyed their interest, or some part thereof, to great persons, and with their countenance did oppress the possessors. The power of great men, to whom rights of action were transferred in order to obtain support and favor in suits brought to assert these rights, the confederacies which were thus formed, and the oppression which followed from the influence of great men in such cases, are themes of complaint in the early books of the English law." *Slywright vs. Pages*, 1 Leon, 167.

Blackstone speaks of these offenses as preventing the process of the law into an engine of oppression. 4 Bl. Comm., 135. So great was the

evil of rich and powerful barons buying up claims, and by means of their exalted and influential positions, overawing the courts, and thus securing unjust and unmerited judgments, and oppressing those against whom their anger was directed, that it became necessary, in an early day in England, to enact statutes to prevent such practices, and to invoke in all its rigor the doctrine against champerty and maintenance. The common law rule prohibiting the assignment of choses in action, and the sale and transfer of land held adversely, was a branch of this same doctrine and arose from the same causes.

The opinion proceeds as follows: "To meet the changed condition of society and administration of justice, the rule has been much modified, so that, upon modern construction, the doctrine of champerty and maintenance, as regards a layman, is confined to cases where a man, for the purpose of stirring up a strife and litigation, encourages others either to bring actions or to make defenses which they have no right to make, or otherwise would not make; such interference is considered as having a tendency to pervert the course of justice. Dorwin v. Smith, 35 Vt., 69; Findon v. Parker; 11 Mess. & W., 675; Stanley v. Jones, 7 Bing., 369. The gist of the offense consists in the officious intermeddling in another suit, and contracts not within the mischief to be guarded against should not be held to come within the rule. It may now be stated as a general rule that a man may sell the whole or part of a thing in action, as well as the whole or part of a thing in possession. The right of disposition is involved in the very idea of property. With few exceptions, not material here, whatever a man may own he may sell, and whatever a man may lawfully sell another man may lawfully buy, and whenever a man has bought anything in the nature of property, he is entitled to all the remedies the law may afford, to enable him to possess and enjoy it.

"It follows that there is now no rule of law which prohibits the purchase of anything otherwise capable of assignment, merely because it may become the subject of a law suit. From this it logically follows that the purchase of a right, which is the subject-matter of a pending law suit by one standing in no fiduciary relation, is not unlawful, unless it is made for the mere purpose or desire of perpetuating strife and litigation, nor can it make any difference, on principle or authority, that the consideration for the purchase is to be used in conducting the litigation and paying the expenses thereof. A fair bona fide agreement, by a layman, to sup-

ply funds to carry on a pending suit, in consideration of having a share in the property if recovered, it seems to us, ought not to be regarded as *per se* void, either on the grounds of champerty, as now understood, or of public policy. Indeed, it may sometimes be in furtherance of justice and right that a suitor who has a just title to property, and no means except the property itself, should be assisted in that way. The doctrine of champerty is directed against speculation in law suits, and to repress the gambling propensity of buying up doubtful claims.

"It is not, nor never was, intended to prevent persons from charging the subject matter of the suit in order to obtain the means of prosecuting it. 1 Add. Cont., 392; Stotsenburg v. Marks, 79 Ind., 193. But agreements of the kind above suggested should be carefully watched and closely scrutinized, when called in question, and if found to have been made, not with a bona fide object of assisting a claim believed to be just, but for the purpose of injuring and oppressing others by aiding in unrighteous suits, or for the purpose of gambling in litigation, or to be so extortionate or unconscionable as to be inequitable against the party, effect ought not to be given to them. Courts administering justice according to the broad principle of equity and good conscience, as they are bound to do, will consider whether the transaction is merely the bona fide acquisition of an interest in the subject of litigation, or whether it is an unfair or illegitimate transaction, gotten up for the purpose merely of spoil or speculation.

"The doctrine of champerty, to the extent of furnishing aid in a suit under an agreement to divide the thing recovered, is *per se* void, we think ought not to prevail, when such aid is furnished by a layman; but when such contracts are made for the purpose of stirring up strife and litigation, harassing others, inducing suits to be begun which otherwise would not be commenced, or for speculation, they come within the analogy and principles of that doctrine, and should not be enforced. Gilbert v. Holmes, 64 Ill., 548; The Mohawk, 8 Wall., 153; Boardman v. Thompson, 25 Iowa, 487."

It will be particularly noticed that the application of the doctrine above explained is, in terms, confined to laymen. In many States statutes have been passed regulating the matter as far as attorneys are concerned. In New York a lawyer is precluded from purchasing choses in action with the intent and for the purpose of bringing an action thereon, and from giving a valuable consideration "as an inducement to

placing, or in consideration of having placed in his hands, or in the hands of another person, a demand of any kind for the purpose of bringing an action thereon." Code, Secs. 73, 74. But these provisions have been construed with great liberality (*Fowler v. Callan*, 102 N. Y., 385), and it seems safe to say that no agreement would be held champertous here unless the express statutory provisions were very literally transgressed.—*New York Law Journal*.

Supreme Court of Wisconsin.

BROWNELL v. DURKEE.

An officer cannot forcibly take personal property from its owner, who has acquired peaceable possession of it, after the officer has levied on it as the property of the third person.

Decided March 17, 1891.

APPEAL by plaintiff from a judgment of the Circuit Court for Rock County in favor of defendants in an action brought to recover damages for an assault upon plaintiff and alleged wrongful ejection of him from a certain railroad car. *Reversed*.

THE FACTS are stated in the opinion.

Mr. Chief Justice COLE delivered the opinion of the Court:

This is an action brought to recover damages for the wrong of the defendants in assaulting the plaintiff on or about the 15th of December, 1885, and forcibly ejecting him from a railroad car while he was unloading coal that belonged to him. The defendants justify their acts by answering that at the time the defendant Harris R. Durkee was a constable, and had a writ of attachment in favor of the other two defendants against one Price and one Paul, and that he levied on the coal in the car mentioned as the property of Price and Paul, in good faith, and without malice, and exercised only so much force as was necessary for the purpose of ejecting the plaintiff from the car where the coal was. It appears that the plaintiff, shortly before the 15th of December, ordered a car of coal, which he expected to sell to Price. The car arrived at Geneva, consigned to him. Price paid the freight on the coal, but did not pay for the coal, and it was not delivered to him by the plaintiff. The attachment was levied on the coal in the car, while the car was standing on the side track of the company at Geneva, on the 15th of December, as the property of the defendants in the attachment. The railroad agent was informed of the attachment, and was asked by the constable to seal the car up, and let it

stand where it was, for him, temporarily. The next day the plaintiff notified the defendants that Price did not own the coal, but that it belonged to him. On the morning of the 17th of December the plaintiff went to the freight depot, saw the agent about the coal, and the agent formally opened and delivered the car of coal to him. The plaintiff thus took quiet and peaceable possession of the car, and was engaged in removing the coal therefrom, when the constable arrived on the ground, forbade him from interfering with the coal, and demanded possession of the car. This being refused, he forcibly ejected the plaintiff from the same, which is the wrong complained of.

These material facts are clearly established by the evidence, and are really not disputed. The possession of the coal, after the seizure on the attachment, must be deemed to have been constructively in the constable, as he had left the car, with its contents, where he found it, though in the charge of the railroad company. But he had taken as complete possession of the coal as was practicable, unless he removed it from the car. The constable had such possession and special interest in the coal by virtue of his levy that he could have maintained an action against any one who interfered with it, had the coal been the property of the defendants in the attachment. It seems to us there can be no doubt as to the correctness of this proposition. But the coal belonged to the plaintiff. It had been ordered by him, and was consigned to him, and was afterwards adjudged to be his property in an action brought to recover the value thereof. But after the seizure, as we have said, he acquired peaceable possession of the coal, and held such possession when the constable deprived him of it in a forcible manner.

The important question in the case is as to the justification of the officer. The other defendants were present at the time, aiding and abetting him in the execution of the writ. The learned counsel for the defendants argues and insists that, as the officer was required by his writ to levy upon the coal the title to which was in dispute or in doubt, and he being indemnified therefor, he was in duty bound to make the levy and hold the property until the question of title was settled, or the property otherwise released; and that an officer, while so acting, may not be lawfully interfered with or resisted by the rightful owner, whether such owner be the defendant in the attachment or not; but that the officer had the right to overcome such resistance, and keep or regain possession by the use of such force as might be necessary for the purpose.

The learned circuit court doubtless adopted this view of the law as it directed a verdict for the defendants.

The counsel for the plaintiff insists that the court erred in thus directing the verdict for the defendants, because, he says, it was a question of fact for the jury to determine whether the defendants were acting in good faith in seizing the coal as the property of Price and Paul, and in taking it from the possession of the plaintiff; also whether the defendants used greater force than was necessary in ejecting the plaintiff from the car; and further, that, under the undisputed testimony, the plaintiff was entitled to recover his actual damages for the wrongful act of the defendants in ejecting him from the car. We shall spend no time in considering the first two questions. As it is said by the opposing counsel, no claim was made on the trial that the evidence raised any doubts on these points, and there was no suggestion or request made that they should be submitted to the jury. The judgment must be reversed for the reason which we will now proceed to state. As we have said, the important question is, was the officer justified or protected in forcibly taking possession of the coal as against the plaintiff, who was the real owner? The counsel for the plaintiff contends he was not so justified or protected. He says notwithstanding the absolute right of the officer to proceed and execute the writ, still, if he takes the property of the plaintiff on a process against Price and Paul, he is none the less a trespasser, upon the rights of the plaintiff, and, if a trespasser, he acquired no property in the thing attached as against the real owner. The plaintiff, he says, may have his action, and recover the value of the property taken, as was done in this case; or, if after the seizure on the attachment, the plaintiff can peaceably obtain the possession of the attached property, he may take it, and thus subject himself to an action at the suit of the officer; but that the officer has no right in law to dispossess the owner by using force for that purpose, and is not protected in doing so.

These different positions of counsel as to the duty and liability of an officer attaching property, though diametrically opposed, are sustained by high authority. There is a serious conflict of judicial opinion on the subject, and we have to make a choice to some extent between the rules laid down in opposing decisions. The courts of Vermont, New Hampshire and Ohio support the contention of the defendants, while those in Massachusetts, New York and Illinois sustain the plaintiff's position. See *State v. Downer*, 8 Vt., 424; *State v. Buchanan*,

17 Vt., 573; *State v. Fifield*, 18 N. H., 34; *State v. Richardson*, 38 N. H., 208; *Faris v. State*, 3 Ohio St., 159. *Contra*: *Com. v. Kennard*, 8 Pick., 133; *Elder v. Morrison*, 10 Wend., 128; *Wentworth v. People*, 5 Ill., 550.

But the rule which commends itself to our judgment as the most salutary and reasonable is to hold that if, after seizure on attachment against a third party, the rightful owner can quietly and peaceably obtain possession of the property, he may retain such possession, and the officer will not be justified in using forcible means to regain possession. If the officer wishes to test the right of the owner, he should bring an action for that purpose. The courts which adopt the Vermont rule think there are strong grounds of public policy, where the question of property is doubtful, that the owner should resort to his remedy at law to settle the question in the courts. There is, doubtless, force in this consideration. Parties should not be permitted to resort to force to vindicate their rights where peaceable remedies exist. But the question can be as well determined in an action brought by the officer as when it is brought by the owner. The courts all admit that due regard should be had to the rights which the owner has to his property, and that these rights should be protected and secured as far as possible. Now, why should the owner then, when he has possession of that which is his own, be required to give it up to an officer who comes with a process, not against him, but against a third party, with whom he has no connection, and demands possession? See *Gilman v. Williams*, 7 Wis., 329 (side page). We can perceive no sufficient reason, founded either in law or on public policy, for holding that the owner of personal property may not insist upon his rights, and refuse to surrender the same to an officer, because the latter has attached it on a writ against a third party. The creditor or officer is not without legal redress to test the question of title to the property. It is admitted that the officer is a trespasser. If he seizes property not belonging to the defendant in the attachment. Why should his unlawful act be regarded with more favor than the rights of the real owner? True, it is said, the owner of property seized or attached on a process against another has legal remedies by an action, and therefore he ought not to be allowed to protect his goods with a strong hand, for this power may be abused so as to cover the property of the debtor, and the creditor may fail to collect his debt. But, as we said, the officer, after a levy, may bring an ac-

tion against any one who interferes with his possession, and thus settle all rights of property. See *Merrit v. Miller*, 13 Vt., 416. There is no hardship in this rule. It is surely unnecessary to allow the officer to resort to force and violence to regain possession of attached property, where the law affords him an adequate legal remedy to enforce his rights. To allow him to use force under such circumstances is certainly not essential for the protection of the officer, nor to vindicate the authority of the law. But the question is so fully considered and discussed in the cases to which we have referred that no further remarks upon the subject are called for.

We think the circuit court erred in directing a verdict for the defendants, and that *the judgment of the circuit court must be reversed, and a new trial ordered.*

Rehearing denied.

New York Court of Appeals.

FIRST DIVISION.

MARGARET O'NEILL

v.

THE DRY DOCK, EAST BROADWAY AND
BATTERY RAILROAD COMPANY;
THEODORE WESTING.

REQUESTS TO CHARGE—ACTION FOR INJURIES SUSTAINED THROUGH COLLISION BETWEEN STREET CAR AND TRUCK.

Decided December, 1891.

Mr. Justice EARL delivered the opinion of the Court:

In July, 1889, while the plaintiff was a passenger in one of the cars of the defendant corporation, she was injured in a collision between the car and a truck of the other defendant, and she brought this action to recover damages for her injuries, alleging that they were caused by the concurring negligence of both defendants.

It is not important now to detail the circumstances attending the injury of the plaintiff. A careful scrutiny of the evidence leaves no doubt upon our minds that it fairly tended to show concurring negligence of both defendants, and the verdict of the jury, approved by the General Term, therefore concludes us. Hence we have only to consider whether any exceptions taken by the defendants, or either of them, upon the trial, point out error.

The collision causing the injury of the plaintiff took place while the car was crossing and

the truck was going up Broadway. The claim of the plaintiff and of the railroad company was that the driver of the truck was negligent because he did not keep the truck out of the way of the car, and drove the truck with its load against the car. Upon the trial a witness was called for the railroad company of large experience as an owner, driver and manager of trucks, and well acquainted with the locality where the collision occurred, and he was asked this question: "Suppose a truck, weighing nineteen hundred pounds, or thereabouts, carrying a load of thirty-six hundred pounds, or thereabouts, and drawn by a horse weighing twelve to thirteen hundred pounds, or thereabouts, and that the horse and truck were being driven up Broadway and were at the time within one hundred feet south of Walker street, driving north, with the horse on a walk, and the horse being a gentle and tractable animal, under full control at the time, within what distance could such a truck, under such circumstances, be stopped, the pavement being wet by sprinkling carts?" This was objected to on behalf of the defendant Westing as "incompetent, and that it is not a question for an expert," and the objection was overruled, and the witness answered: "Between three and four feet." This belongs to a class of questions not much to be encouraged. The answer to such a question can be of but little service to jurors. They are generally well acquainted with such common things as trucks and horses, and the power, action and capacity of horses, which, particularly in the city of New York, are constantly open to observation. Yet we cannot say that the expert witness did not know more about the subject of inquiry than ordinary jurors can generally be supposed to know. The question is barely competent, and probably was not harmful, and the judgment should not therefore, be reversed because the judge allowed it to be answered.

The counsel for the railroad company, in a variety of forms, requested the court to charge that the railroad company with its car crossing the street had the right of way, and the paramount and superior right in the street, which the driver of the truck was bound to respect and he refused so to charge, and this refusal is not complained of as error. The rule invoked by these requests has its application where the tracks of street railways are laid in the streets. As the cars must run upon the track and cannot turn out for vehicles drawn by horses they must have the preference, and such vehicles must, as they can, in a reasonable manner, keep off from the railroad tracks, so as

to permit the free and unobstructed passage of the cars. In no other way can street railways be operated. As to such vehicles the railways have the paramount right to be exercised in a reasonable and prudent manner. But a railway crossing a street stands upon a different footing. The car has the right to cross and must cross the street, and the vehicle has the right to cross and must cross the railroad track. Neither has a superior right to the other. The right of each must be exercised with due regard to the right of the other, and the right of each must be exercised in a reasonable and careful manner, so as not unreasonably to abridge or interfere with the right of the other.

After the judge had charged the jury the counsel for the defendant, Westing, was proceeding to ask the judge to charge some request and the judge said to him that he declined to receive any more requests from him, and to this the counsel excepted, and he now claims that his client's rights were erroneously abridged. In Chapman v. McCormick (86 N.Y., 479), we held that it is the legal right of counsel on the trial of an action to submit propositions bearing upon the action, and that it is the duty of the court to instruct the jury on each proposition, and that a denial of such right is the subject of exception and of review upon appeal. But the facts of this case do not bring it within the rule there laid down, nor within the reasons which induced the decision in that case. Here, before the judge commenced his charge, the counsel for the respective parties handed up to him requests to charge, and he either charged or refused to charge such requests. After the judge had finished his charge, and passed upon the requests to charge, the counsel for defendant, Westing, made a further request to charge, when the judge asked him if he had "anything else?" He replied, "That is all I wish for that." The judge then said, "Go on," and then he made another request, and the judge charged as to the request in a manner satisfactory to him, and then he apparently took his seat.

The counsel for the railroad company then made a request to charge, which the judge acceded to. Then the counsel for Westing again arose and proceeded to make a further request, which the court declined to hear or receive. Here the judge did not abuse his discretion. His refusal to hear or receive the further request was not arbitrary. He had fully and fairly laid down the law applicable to the facts of the case. The counsel for the defendant Westing had had full opportunity to make his requests, and had

made them so far as he deemed important both before and after the charge was made, and whether after that he should be permitted to prolong the trial, and still further vex the judge with requests, rested in his discretion. The counsel of a party cannot ask as a right unreasonably to prolong a trial, by the examination of witnesses, or by debates to the court or the jury or by innumerable and interminable requests to charge. In these matters the judge has some discretion, to be exercised in the interest of justice, and with a due regard to the rights and interests of the parties. A party has a right to a reasonable opportunity to present his evidence, objections and requests, and after he has had that he cannot complain of reasonable restrictions and limitations put upon the exercise of his right by the judge in the fair use of the discretion which he undoubtedly possesses.

There are various other exceptions in the case, to some of which our attention has also been called. But they point out no error and need no further attention here.

*The judgment should be affirmed, with costs.
All concur.*

Chinese Courts.

The course of American politics, we usually acknowledge, is like a stream flowing over shifting sands—liable to get a little muddy and sometimes to change its channel; but in contrast to this we point to our courts of justice, apart from turmoil, inaccessible to bribes, unswerved by the stress of party conflict. The Chinese have studied these courts, and though they can hardly pretend to have mastered the mysteries of their intricate apparatus, it strikes our critics that no system could be more skillfully designed for the purpose of defeating justice. A court consists of three elements—bench, bar and jury—the second and third apparently serving no other ends than to prevent law and to screen the guilty. In China, where there is neither bar nor jury, the processes of law are not only more expeditious, but, as the Chinese assert, more certain. In their eyes the jury is open to three objections: (1) while the weighing of evidence requires a trained mind, the jurors are chosen at random and are chiefly uneducated men; (2) their verdict is required to be unanimous, making conviction next to impossible in cases that admit of a difference in opinion; to secure impartiality, they are required to declare beforehand that they have formed no opinion on the subject; they are accordingly men who either do not read or do not reflect. In addition to these

objections, much time is lost in impanelling a jury; and then the judge has to instruct them how to understand the evidence. Why not permit the judge and a couple of assessors to pass on the facts in the first place? It is amusing to an oriental to learn that these jurors are locked up and deprived of food in order to compel them to agree, and that one man who can endure hunger longer than the others may thereby procure the release of a prisoner. Such is the palladium of our liberties—an institution which ranks among the noblest privileges of Magna Charta! As for the bar, in the estimation of the Chinese its theory is thoroughly immoral, and the practice founded on it is a game of trickery and deceit.

One of our great writers gives a comical picture of a judge who averred, 'when he had heard one side, that he could understand the case, but who always suffered from a confusion of ideas when he came to hear the other. The function of a lawyer is to compel a judge to hear the other side. The lawyer, however, is by the rules of his profession permitted to present only a one-sided view of the case. He seeks not the triumph of right, but the success of his client. The opposing counsel strives to determine the court in a contrary direction, and between these contending views the arrows of justice will not fail to go straight to the mark! Each advocate browbeats the other's witnesses; he lays snares for the unwary, and to weaken their testimony he does his best to ruin their reputations. One who has the gift of eloquence appeals to the sympathies or prejudices of the jurors who, being unsophisticated men, are liable to be carried away by his oratory. He acquires a name for power over the jury, and the litigant who can offer him the heaviest fee is almost sure to win his suit. What an original scheme for the promotion of even handed justice! In some of our courts our visitors see a statue representing a blindfolded goddess holding aloft a pair of scales. That emblem expresses perfectly the Chinese ideal of the character of a judge; but to express ours it ought to exhibit the counsel for the litigants as doing their best by surreptitious means each to turn the scale in his own favor. The task of weighing rival claims in such circumstances must transcend even the powers of a goddess. By means of these aids to justice rogues are set free to prey on society; wills of honest testators are broken; creditors are defrauded of their dues, and more than all, through this cumbrous machinery, the processes of law are rendered so expensive that the poor are deterred from attempting to de-

fend their rights. Whatever else our Chinese visitors may borrow, they are pretty certain not to transplant either bar or jury.—*The Forum.*

District Court, Western District of Virginia.

UNITED STATES v. THOMAS.

OBSTRUCTING JUSTICE—Assaulting Witness After Case Dismissed.—Rev. St. U. S., Sec. 5399, providing that every person who by threats or force endeavors to intimidate or impede any witness "in any court of the United States," or by threats or force endeavors to impede the due administration of justice therein, "shall be punished," etc., does not apply to the act of one who, two months after a prosecution against him before a United States Commissioner has been dismissed, beats a person who had appeared therein as a witness against him.

[At Law. Decided September 17, 1891.]

INDICTMENT for beating a witness and obstructing justice.

Walter Thomas had been a witness on behalf of the United States before a United States Commissioner in Floyd County. The Commissioner, upon examination, dismissed the case. Two months afterwards, Walter Thomas was assaulted and beaten by a gang of men, at his house, in the night time. The men who made the assault were indicted under section 5399, Rev. Stat. U. S. The defendant was tried separately. Counsel for the defendant took the position that as Walter Thomas was not at the time of the beating a witness in any court of the United States, or in any cause pending therein, defendant could not be prosecuted under this section of the statutes. The evidence developing the fact that the said Walter Thomas was not at that time a witness in any case before any court of the United States, under either recognizance or subpœna, the court sustained the position of counsel for the defendant.

PAUL J., (*after stating the facts as above*):

This is an indictment under section 5399, Rev. St. U. S., which provides that—

"Every person who corruptly, or by threats or force, endeavors to influence, intimidate, or impede any witness or officer in any court of the United States in the discharge of his duty, or corruptly, or by threats or force, obstructs or impedes, or endeavors to obstruct or impede, the due administration of justice therein, shall be punished by a fine of not more than five hundred dollars, or by imprisonment not more than three months, or both."

In this case it is shown by the evidence that Walter Thomas, on whom the alleged violence was committed, had been a witness against the accused on a warrant issued by and tried before

a United States Commissioner. This trial was had before the commissioner about two months before the alleged beating took place, and the warrant was dismissed by the commissioner, and the relation of Thomas as a witness was ended with the dismissal of the warrant. At the time of the alleged assault he was not under recognizance or subpoena as a witness, nor is it shown from the evidence that it was contemplated by the Government to use him in the further prosecution of the case, which had been dismissed by the commissioner, or in any other case, either in an actual or contemplated prosecution. His relation to the court as a witness was entirely severed, and he stood upon the same footing as every other citizen of the State, and entitled to the same protection under her laws. The court cannot concur in the view of the United States attorney that the protection given a witness, under this section, follows him after he has been discharged as a witness, and the court has no further power or control over him as such. The court is of opinion that the protection of the law, under this section, is coincident and continuous with the power of the court over the witness, to compel him to attend and give evidence in some pending case; and, when this relation between the court and the witness ceases, the protection of the law, under this section, is terminated. The language of the statute is, "intimidate or impede any witness or officer in any court;" not after this relation is ended. Nor does the court think that the offense charged here falls within the clause applying to the "obstructing or impeding the due administration of justice;" as contended by the United States attorney. This clause is intended to apply to acts done to prevent the proper administration of justice in a pending cause, not in a cause already ended, or one not yet begun. While the remote effect of acts of violence of this kind may be to deter timid persons from putting on foot prosecutions against violators of the law, this cannot be said to be obstructing or impeding the due administration of justice, in the sense contemplated by this section of the Revised Statutes. For injuries of the kind complained of here, and sought to be prosecuted under this section, another section (5406) of the Revised Statutes makes provision, and witnesses who have testified before the courts of the United States are not left to the mercy of combinations of lawless men to do them injuries for having testified against them.

The jury will find a verdict of not guilty.

Law Blanks at the Law Reporter 503,

EXTRADITION—Trial for Different Offense—Waiver of Privilege—Habeas Corpus.—(1) The rule of law in cases of foreign extradition, that a person extradited under the provisions of a treaty cannot be prosecuted for a different crime than the one specified in the warrant of extradition, applies with equal force in cases of extradition between the States of the Union; and a person who has been surrendered under the extradition proceedings by one State to another, cannot, unless he waives the privilege, be lawfully tried for a different crime from that for which his extradition was obtained, while he is in custody thereunder. (2) If the accused asserts his privilege before trial, and objects to the trial on the ground that his indictment is for a crime other than that for which he was extradited, he is entitled to its benefit, although he did not plead the privilege in abatement of the indictment, and although he entered a plea of not guilty. (3) A proceeding in error and not a habeas corpus is the appropriate remedy for the review and correction of errors committed by courts while acting within the sphere of their authority. But where a court has acted outside of its jurisdiction in enacting or issuing an order or process, habeas corpus is the appropriate remedy for obtaining a discharge from imprisonment under such order or process. *Ex parte McKnight*, Supreme Court of Ohio, Nov. 17, 1891, 28 N. E. Rep., 1034.

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RAILROAD, CONSTRUCTION OF—Consequential Damages.—Where by reason of the construction of a railroad in proximity to lands, they are rendered less valuable, damages may be recovered for such depreciation in value, although no part of the land is taken, nor the ingress or egress of the owner thereof disturbed, nor his easement in a public highway interfered with. *Fort Worth and Rio Grande Rwy. Co. v. Downie*, Supreme Court of Texas, Nov. 28, 1891, 17 S. W. Rep., 620.

RAILWAYS—Action Against by Passenger.—Where the agent of a railroad company delivers to a passenger a ticket which is incorrect in that it does not properly describe the trip, which ticket the conductor refuses to accept, and the passenger, being without means to pay his cash fare, is ejected, he is not restricted to an action of assumpsit for breach of contract, but may bring an action of tort for damages. *Poulin v. Can. Pac. Rwy. Co.*, U. S. Ct. E. D. Mich., Oct. 13, 1891 (47 Fed. Rep., 85).

THE COURTS.

Supreme Court of the District of Columbia.

IN EQUITY—New Suits.

January 27, 1892.

13680. A. E. Bateman et al. v. Carrie S. Plumb et al. Pliffs. atty., H. H. Wells.

13681. Isaac P. Childs et al. v. Peter Little et al. Judgment creditors' bill. Com. sol., Thos. M. Fields.

January 28.

13682. T. J. Mayer et al. v. T. W. Widdicombe et al. Judgment creditors' bill. Com. sol., H. E. Davis.

13683. Fannie S. Godfrey v. Jos. Godfrey. For divorce. Com. sol., H. P. Okie.

13684. Maggie D. Nicholson v. Augustus S. Nicholson. For divorce. Com. sol., E. B. Hay.

13685. Sarah A. Clarke v. W. H. Clarke. For divorce. Com. sol., E. B. Hay.

13686. Mary Gibbons et al. v. Jno. F. Cox. To substitute trustee. Com. sol., Jesse H. Wilson. Defts. sol., Jno. Ridout.

13687. T. J. Mayer et al. v. J. A. Schuerger et al. Judgment creditors' bill.

13688. Patrick Whitney v. C. C. Duncanson. To vacate deed and declare trust. Com. sol., A. H. Bell.

13689. Effie B. Colegrove v. Russell Colegrove. For divorce. Com. sol., J. McD. Carrington. Defts. sol., A. A. Lipscomb.

January 30.

13690. Alonzo B. Cochran v. Elmon P. Shipley et al. To vacate assignment made to Knight & Co. Com. sol., Wm. M. Lewin. Defts. sol., Crandall Mackey.

February 1.

13691. Catherine A. Brashears v. Margaret Kennelly. To declare partnership void, for receiver and for an accounting. Com. sol., Chase Roys.

13692. Morris Wright v. Julia Wright. For divorce. Com. sols., Jas. F. Bundy and G. Herbert Renfro.

AT LAW—New Suits.

January 20, 1892.

32534. C. F. Guyor Co., Ltd., (a corporation) v. Edmund S. Wheeler. Account, \$227.41. Pliffs. atty., A. A. Birney.

32535. Jno. Vance Lewis v. Tue Hamburg-Bremen Fire Ins. Co. Policy, \$2,500. Pliffs. attys., Worthington & Heald.

32536. The Street Rwy. Publishing Co. v. The Judson St. Rwy. Co. Note, \$302.76. Pliffs. atty., J. A. Bartlett and A. H. Bell.

32537. C. F. Montgomery v. Patrick Sheehy. Account, \$321.48. Pliffs. attys., Brainard & Le Barnes.

32538. Campbell Carrington, admr. of Mary M. Butler, deceased, v. The W. & G. Rwy. Co. Damages, \$10,000. Pliffs. atty., I. Williamson.

32539. Jno. Cessna v. Wm. W. Dudley. Account, \$40,000. Pliffs. atty., Jno. Cessna.

32540. Ewell A. Dick v. Mary J. Horniler. Notes, \$315. Pliffs. atty., J. Walter Cooksey.

January 21.

32541. Aaron Jackson v. R. H. Hudson, trading as "A. M. Hudson." Account, \$237.50. Pliffs. atty., A. H. Bell.

32542. J. Walter Groves v. Jno. T. Cheshire. Replevin. Pliffs. atty., W. P. Williamson.

January 22.

32543. F. H. Smith et al. v. Barbara C. Clements. Judgment of Justice Taylor, \$25.

January 23.

32544. Warner Guy v. Jefferson Jackson. Replevin. Pliffs. attys., Woodward & Lipscomb. Defts. atty., Thos. M. Fields.

32545. Bertha M. Warzburger v. Andreas Walter. Account, \$159.38. Pliffs. atty., A. H. Bell.

32546. Bertha M. Warzburger v. R. Robey. Notes, \$108. Pliffs. atty., A. H. Bell.

32547. In re. the last will and testament of Katie Hutchinson Olmstead. Issues from Probate. Pliffs. attys., Enoch Totten and Webb & Webb for caveators.

32548. Laurence S. Smith v. Sophronia C. Snow. Replevin. Pliffs. atty., R. D. Mussey.

32549. W. E. Baldwin admir. of G. H. Baldwin, deceased, v. the Metropolitan RR. Damages, \$10,000. Pliffs. atty., Jno. Ridout.

Legal Notices.

FIRST INSERTION.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 5th day of February, 1892.

Augustus F. Rodgers et al. } vs. } No. 13,679. Eq. Docket 33.
Montgomery Meigs et al. }

On motion of the plaintiffs, by Abert & Warner, their solicitors, it is ordered that the defendant, ELIZABETH RODGERS, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to have a new trustee appointed in the place and stead of Montgomery C. Meigs, deceased.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.

6 By M. A. Clancy, Asst. Clerk.

[Filed February 5, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of February, 1892.

Alexander Morris, guardian, } vs. } No. 13,673. Docket Eq. 33.
Morris S. Smith et al. }

On motion of the complainant, by Messrs. Jesse H. Wilson and John Ridout, his solicitors, it is ordered that the defendant, MORRIS S. SMITH, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a decree for the sale of lot 60 in the subdivision of square 162 in the city of Washington, District of Columbia, and the re-investment of the proceeds of sale in accordance with the provisions of sections 957 to 968 both inclusive, of the Revised Statutes relating to the District of Columbia.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.

6 By L. P. Williams, Asst. Clerk.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters of Administration on the personal estate of **EMILY H. REED**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of January, 1892.

THE WASHINGTON LOAN & TRUST CO.
6 John B. Larner, Proctor. By B. H. Warner, Prest.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **JOHN ROME**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23d day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23d day of January, 1892.

JOSEPH R. BROWN,
6 John A. Barthel, Proctor. 387 I St. N. W.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **CATHARINE V. COBB**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of February, 1892.

NEHEMIAH COBB,
1012 10th St. n. w. City.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

February 5th, 1892.

In the case of **Henry V. Parsell**, Administrator of **NORRIS PETERS** deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 4th day of March, A. D. 1892, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: **L. P. WRIGHT.**

Register of Wills for the District of Columbia.
6 No. 3581. Ad. Doc. 15. John E. Kenna and Martin F. Morris, Proctors

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business.

February 6th, 1892.

In the matter of the Estate of **CATHARINE McDONOUGH**, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased, has this day been made by **J. William Lee**, a creditor of said estate.

All persons interested are hereby notified to appear in this Court on Friday, the 4th day of March, next, at 11 o'clock a. m., to show cause why Letters of Administration on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. **A. B. HAGNER**, Justice.

Test: **L. P. WRIGHT.**
Register of Wills for the District of Columbia.
6 No. 4809. Ad. Doc. 17. Geo. E. Johnson, Proctor.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

Holding a Special Term for Orphans' Court Business.

February 5th, 1892.

In the matter of the Estate of **ELIZABETH A. TOWNSEND**, late of Washington, D. C., deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration c. t. a. on the Estate of the said deceased has this day been made by **Samuel H. Ellis**, Executor named in said Will, who prays that such Letters may be granted to **Richard Sylvester**.

All persons interested are hereby notified to appear in this Court on Friday, the 4th day of March next, at 10 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration c. t. a. on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter, the Evening Star, of Washington, D. C. and the New York Herald, previous to the said day.

By the Court. **A. B. HAGNER**, Justice.

Test: **L. P. WRIGHT.**
Register of Wills for the District of Columbia.
6 No. 4815. Ad. Doc. 17. C. Maurice Smith, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

February 5, 1892.

In the matter of the Estate of **JOHN GRINDER**, late of Washington, D. C., deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by **Edward M. Grinder**.

All persons interested are hereby notified to appear in this Court on Friday, the 4th day of March next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Washington Post previous to the said day.

By the Court. **A. B. HAGNER**, Justice.

Test: **L. P. WRIGHT.**
Register of Wills for the District of Columbia.
5 No. 4812. Ad. Doc. 17. J. J. Darlington, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

February 5th, 1892.

In the matter of the estate of **MARY JANE ROSS**, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased, has this day been made by **Irving Gibson**.

All persons interested are hereby notified to appear in this Court on Friday, the 4th day of March next, at one o'clock p. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star previous to the said day.

By the Court. **A. B. HAGNER**, Justice.

Test: **L. P. WRIGHT.**
Register of Wills for the District of Columbia.
6 No. 4789. Ad. Doc. 17. J. H. Adriaans, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Caroline Amelia Shedd vs. **No. 13,445. Equity Doc. 32.**

Frederick R. Slater et al.

Upon consideration of the report of the trustee filed in this cause this day, it is this 2d day of February, 1892, ordered and decreed that the sale of the said sub lot fourteen (14) in square north of square two hundred and forty-two (242), as reported by the trustee, be ratified and confirmed, unless cause to the contrary be shown on or before the 2d day of March, 1892.

Provided a copy of this order be published in the Washington Law Reporter once in each of three (3) successive weeks prior to said date.

The amount of the said sale as reported is five thousand five hundred and eighty-seven dollars and sixty-five cents (\$5,587.65).

True copy. Test: **J. R. Young**, Clerk.

By **L. P. Williams**, Asst. Clerk.
[Filed February 2, 1892. **J. R. Young**, Clerk.]

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

The 5th day of February, 1892.

William B. Moses and William H. Moses, partners, trading as W. B. Moses & Son. vs. No. 82,482. At Law Docket 38.
Whitman Dunbar.

On motion of the plaintiff, by Mr. W. L. Cole, his attorney, it is ordered that the defendant, WHITMAN DUNBAR, cause his appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to recover a judgment against the defendant for the sum of two hundred and ninety-two and $\frac{1}{2}$ dollars, with interest thereon from the 20th day of January, 1891, and costs of suit, and to condemn for satisfaction thereof certain goods and chattels which have been levied upon and seized under the writ of attachment in this case.

By the Court. M. V. MONTGOMERY, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 8th day of February, 1892.

George A. Burch, complainant, vs. No. 18,421. Eq. Docket 32.
Elia Burch, defendant.

On motion of the plaintiff, by Mr. Eugene F. Arnold, his solicitor, it is ordered that the defendant cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce a vinculo matrimonii on the ground of willful desertion and abandonment for the full and uninterrupted space of two years of complainant by the defendant.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
By M. A. Clancy, Asst. Clerk.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of MARY J. RICKETTS, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of February, 1892. JOHN W. HARSHA.

6 Campbell Carrington, Proctor.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters Testamentary on the personal estate of MARTHA R. WILSON, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 6th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of February, 1892. MARTIN L. WELFLEY,

6 Frank T. Browning, Proctor. No. 302 East Cap. St.

SECOND INSERTION.**This is to Give Notice**

That the subscribers of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters Testamentary on the personal estate of GEORGE W. GIST, late of the District of Columbia, deceased.

All persons having claims against the said deceased, are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 2d day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 2d day of February, 1892. IVORY G. KIMBALL,

MARY S. GIST,

5 Joseph J. Darlington, Proctor. 1341 F St.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

The 1st day of February, 1892.

Henry Hannah, Assignee, vs. A. S. Butler, and unknown heirs of George Augustus Butler. No. 18,612. Equity Docket 33.

On motion of the plaintiff, by Mr. Frank W. Hackett their solicitor, it is ordered that the defendants, the unknown heirs of GEORGE AUGUSTUS BUTLER, late of Washington, in this District, deceased, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to sell certain real estate in this District, to wit: a lot in square eighty (80) in the city of Washington, of which the said George Augustus Butler, who recently died in China, died seized, and to pay from the proceeds a claim of the plaintiff, equitably secured on said real estate.

This notice is to be published once a week for three weeks in the Washington Law Reporter and The Evening Star before said day.

By the Court. A. B. HAGNER, Justice, &c.
A true copy. Test: J. R. Young, Clerk, &c.
5 By L. P. Williams, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

On the 4th day of February, 1892.

Wm. R. Davis vs. Catherine Davis. No. 18,658. Eq. Docket 33.

On motion of the plaintiff, by Mr. Samuel H. Lewis, his solicitor, it is ordered that the defendant, CATHERINE DAVIS, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce a vinculo matrimonii for desertion.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
5 By M. A. Clancy, Asst. Clerk.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters Testamentary on the personal estate of ELIZABETH R. DYER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of February, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day of February, 1892. JAS. S. TAYLOR,
5 Care Samuel Maddox, Proctor, 462 La. Ave.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 4th day of February, 1892.

Charlotte M. Swails vs. Stephen A. Swails et al. No. 18,659. Eq. Docket 33.

On motion of the plaintiff, by Messrs. John H. Smythe, and E. M. Hewlett, their solicitors, it is ordered that the defendants, JOHANNA SWAILS, RACHEL JONES, JOHN W. JONES, HENRIETTA DENNING, CHARLES DENNING, CATHERINE LUSH, and PETER LUSH, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for the appointment of a trustee with power to convey, part of lot "H" in Sq. 157, in the District of Columbia (the title to which is now in the name of Jesse A. Swails), to Charlotte M. Swails.

By the Court. A. B. HAGNER, Justice, &c.
A true copy. Test: J. R. Young, Clerk, &c.
5 By M. A. Clancy, Asst. Clerk.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters Testamentary on the personal estate of FREDERICK W. SCHAPER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 30th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of January, 1892.
GEORGE SCHEUCH,
5 Leon Tobriner, Proctor. 801 Md. Ave., n. e.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business.

January 29th, 1892.

In the matter of the Estate of SOPHIE OBERHEIM, late of the District of Columbia, deceased.

Application for the Probate of the last Will and for Letters Testamentary on the Estate of the said deceased, has this day been made by John Oberheim.

All persons interested are hereby notified to appear in this Court on Friday, the 26th day of February, next, at one (1) o'clock P. M., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Washington Post previous to the said day.

By the Court. A. B. HAGNER, Justice,
Test: L. P. WRIGHT.
Register of Wills for the District of Columbia.
5 No. 4801. Ad. Doc. 17. Chapin Brown, Proctor.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of PAUL BALL, late of the District of Columbia, deceased; on the 6th day of January, A. D. 1891.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 11th day of August, 1892, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of January, 1892.
ANNA MARIA BALL.
5 Eugene J. B. O'Neill, Proctor. 1213 G St. n. w.

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters of Administration on the personal estate of ELIZABETH P. SMITH, late of the District of Columbia deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of January, 1892.
MINNIE B. HEARD,
8 Irwin B. Linton, Proctor. 1344 Vermont Ave.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business,

January 29th, 1892.

In the case of Thomas E. Wagaman, Administrator, c.t.a. of LIZZIE MAHON, deceased, the Administrator c.t.a. aforesaid has, with the approval of the Court, appointed Friday, the 4th day of March, A. D. 1892, at 11 o'clock a.m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residuum, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administratrix c.t.a. will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: L. P. WRIGHT.
Register of Wills for the District of Columbia.
5 No. 4184. Ad. Doc. 16. Irving Williamson, Proctor.

Legal Notices**THIRD INSERTION.****This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of HENRY K. FULTON, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of January, 1892.
LAURA E. FULTON,
4 Chapin Brown, Proctor. 1514 Park St.
Mount Pleasant, Washington, D. C.

This is to Give Notice

That the subscribers, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of JAMES BRADLEY ADAMS, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 25th day of January, 1892.
BYRON S. ADAMS,
BETTIE B. SWAYZE,
4 John B. Larner, Proctor. 512 11th St. n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of WILLIAM M. IRELAND, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of January, 1892.
CHAS. R. SMITH,
611 Q St. n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding Special Term for Orphans' Court business, Letters of Administration on the personal estate of SARAH HENRY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of January, 1892.
WILLIAM COCHRAN,
4 Edwards & Barnard, Proctors. 465 F St. Southwest.

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of MARY DORSEY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23d day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23d day of January, 1892.
CALVIN T. S. BRENT,
4 Jas. H. Smith, Proctor. 1038 18th St. n. w.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of MARY L. HARTLEY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 22d day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of January, 1892.

EDWIN BRADFIELD HARTLEY,
4 Henry S. Matthews, Proctor. 73 Myrtle Ave.
Montclair, N. J.

This is to Give Notice

That the subscribers, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of MOSES T. BRIDWELL, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscribers, on or before the 15th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 15th day of January, 1892.

ANDREW A. LIPSCOMB,
Mertz Building, 11th and F. n. w.
4 JOB BARNARD, 500 5th St. n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters of Testamentary, on the personal estate of CHARLES X. MARTIN, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 22d day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of January, 1892.

IRVIN B. LINTON,
4 Irwin B. Linton, Proctor. 1534 9th St. n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of EDWARD J. SHORT, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 25th day January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of January, 1892.

JOSEPH C. JOHNSON,
4 E. M. Spaulding, Proctor. 64 Corcoran Building.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 26th day of January, 1892.

The Gottschalk Company of
Baltimore, Md. } No. 11,626. Eq. Docket.
vs.

James P. Garrity et al.

On motion of the plaintiff, by Mr. S. T. Thomas, its solicitor, it is ordered that the defendants, IDA V. GARRITY, CORA GARRITY, FLORENCE GARRITY and WILLIAM GARRITY, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to subject the equitable interests of the defendants in sub lot 8, in square 315, in Washington, D. C., to the payment of a certain judgment at law, numbered 29,364 in said cause in favor of the said Gottschalks Company against the above named James P. Garrity, for the sum of \$1,449.06 interest and costs.

A. B. HAGNER.

True copy. Test:

J. R. Young, Clerk, &c.
By M. A. Clancy, Asst. Clerk.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphan's Court business, Letters Testamentary on the personal estate of CHRISTOPHER R. P. RODGERS, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 23rd day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23rd day of January, 1892.

ALEX. RODGERS,
4 James Lowndes, Proctor. 1529 Jefferson Place.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

January 25th, 1892.

In the case of Job Barnard, Administrator c. t. a. of MARCUS M. WHEELOCK, deceased, the Administrator c. t. a. aforesaid, has, with the approval of the Court, appointed Friday, the 26th day of February, A. D. 1892, at 11 o'clock a. m. for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator c. t. a. will take the benefit of the law against them.

Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: **L. P. WRIGHT,**
Register of Wills for the District of Columbia.
4 No. 4267. Ad. Doc. 16.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

January 22nd, 1892.

In the case of John Couper Edwards, John Lafonchere Edwards, and George Kerr Edwards, Executors of ELIZABETH R. EDWARDS, deceased, the Executors aforesaid have, with the approval of the Court, appointed Friday, the 26th day of February, A. D. 1892, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter, previous to the said day.

Test: **L. P. WRIGHT,**
Register of Wills for the District of Columbia.
4 No. 4244. Ad. Doc. 16. Reginald Kendall, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

January 22d. 1892.

In the matter of the Estate of JANE ELIZABETH OLIVIA RHODES, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by William Joseph McCauley of the District of Columbia.

All persons interested are hereby notified to appear in this Court on Friday, the fourth day of March next, at one o'clock, p. m., to show cause why the said Will should not be proved and admitted to probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Washington Post previous to the said day.

By the Court: **A. B. HAGNER, Justice.**
Test: **L. P. WRIGHT,**
Register of Wills for the District of Columbia.
4 No. 4783. Ad. Doc. 17. James Hoban, Proctor.

The Washington Law Reporter.

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WASHINGTON, D. C., - - - FEBRUARY 18, 1892

IT IS to be hoped that the friends of the bill to create three additional judges of the Supreme Court of the District will take steps, and that speedily, to secure concert of action, not only in pressing the passage of the bill, but also to make known to the proper committees of Congress the serious objections to the proposed "appellate court" bill. If the latter measure becomes a law it will only be because of the supine negligence of those who ought to be up and doing to defeat it. The friends of this wild notion are at work. Its opponents, who compose the large majority of the active members of the bar, must not suppose that this work amounts to nothing. On the contrary, it has had its effect upon one committee already, and unless something is done to counteract it there will be danger of a wrong impression getting among legislators who know little or nothing of our situation and its needs, except as they are informed by members of the bar. So far they have heard only from a few active gentlemen infatuated with the idea of change. These Congressmen do not know that the passage of this absurd measure would be a public calamity. They do not know that the majority of the members of the bar, qualified to dispassionately consider the situation, are opposed to the disruption of a tried and established judicial system and the substitution for it of a legislative experiment. They do not know that we need no better appellate court than that afforded by the Supreme Court of the Dis-

trict of Columbia when supplied with a sufficient number of judges to enable the senior justices to sit permanently in General Term. If for the past five years the court had consisted of nine instead of six judges, so that it could have kept up with its business, this appellate court idea would never have possessed the minds of anybody. It is the idea of change—that any change would be an improvement on the present conditions of affairs. But destruction is not improvement. All that is needed is a sufficient force of judges to keep the wheels of an excellent piece of judicial machinery moving. Shall we break up the machine, or get the force to run it? The plan upon which the Supreme Court of the District of Columbia is organized enables it to grow with the growth of the community. Thus the population of the District has trebled since the court was organized in 1863. To meet this growth the court has been enlarged from three to four, then to five, then to six judges, and now it should be increased to nine while we retain the plan or working system of the court by which through its Special and General Terms it administers justice. In other words, let us continue to retain the machinery while we increase the motive power by getting Congress to give us three more judges to do the increased and increasing work required of it.

Amendment to Rule 90, Section 4.

The General Term has adopted the following rule in regard to the hearing of cases :

2. In every case in the General Term the counsel for the party having the affirmative, shall, at least six (6) days before the case is called for argument, file with the clerk ten (10) copies of a printed brief containing a statement of the case and the points of law and fact to be argued, with reference to the authorities to be relied on.

The counsel for the opposite party shall file a brief of a similar character, omitting at his option, a statement of the case, at

least three (3) days before the case is called for argument.

Five of the briefs so filed on either side shall be for the use of the opposite party.

Supreme Court of the District of Columbia.

THE UNITED STATES
vs.
WILLIAM D. CROSS.

1. A witness may be examined as to his antecedents and associations; but it is within the discretion of the court whether he shall be interrogated merely for the purpose of enabling a party to use the information received by the answers as a means of procuring other evidence to impeach the character and credit of such witness.
2. The declaration of a party made soon after the commission of an undenied act are admissible as part of the res gestae for the purpose of explaining the meaning and intent of the act; but when such evidence is offered not to show the meaning of an act but to show that the act charged to have been done, was never committed, it is inadmissible.
3. A witness can only refresh his memory by reference to some record or memorandum and not by having his oral testimony given at a former trial repeated to him.
4. In the trial of an accused for the murder of his wife, the defense being suicide, evidence that six months before the shooting and three months before her marriage the deceased bought a revolver and declared her intention to use it upon herself under certain circumstances, is too remote to be admissible.
5. The improper exclusion of evidence is not a ground for a new trial when it appears that notwithstanding the ruling of the court the evidence was finally gotten in at a subsequent period of the case.
6. So, too, the refusal to admit evidence tending only feebly to contradict a statement of another witness that the accused had made threats towards the deceased, there being other uncontradicted evidence of such threats.
7. The defendant having been convicted, his measurement was taken in the Marshal's office in accordance with a general direction of the Department of Justice as to convicted persons. Afterwards, on a new trial being granted the record of this measurement was offered in evidence it was objected to as hearsay because it appeared that the person making the entries had not taken the measurement himself, but had only written it down upon its being called out to him by the person taking it. It was also objected to as equivalent to compelling the defendant to give evidence against himself. Held, that neither of these objections were tenable.
8. A new trial will not be granted because of alleged improper statements made to the jury by the prosecuting officer in his opening, nor because of his alleged misconduct in prejudicing the minds of the jury by offering to prove so called dying declarations which it is alleged were known to him to be inadmissible, unless it appear that objection was made to these matters at the trial, so that if improper, the effect of them could have been removed by the court in its instructions to the jury; and especially will an appellate court refuse to try upon affidavits the question whether the prosecuting attorney was justified by the facts in his possession in making certain offers of proof, which, though ruled out, might have had the effect to prejudice the minds of the jury against the defendant.

9. Newly discovered evidence which only goes to affect the credit of a witness is not a ground for granting a new trial.

10. It is too late after a jury has been sworn to challenge any of its members *propter defectum*; nor can the verdict be set aside on a motion based upon that ground.

11. It is no objection to a person chosen as a juror that he is a citizen of one of the States if he resides in the District of Columbia.

No. 16,699. Criminal Docket 17. Decided February 11, 1889. The CHIEF JUSTICE and Justices COX and JAMES sitting.

Messrs. CHAS. C. COLE, U. S. Attorney for the District of Columbia, and Mr. CHAS. A. ARMES, Assistant Attorney, for the United States.

Messrs. JOSEPH SHILLINGTON and C. MAURICE SMITH for the defendant.

Mr. Justice COX delivered the opinion of the Court:

We have examined the testimony in this case, as reduced to typewriting, the briefs of counsel and the authorities cited and have given them the consideration that the gravity of the case demands. The case has really been argued before us as if it were to be tried here *de novo* on both the law and facts. It must be remembered that we can only look at the case in respect to the errors alleged to have been committed at the trial, and can only reverse the rulings of the Court at Special Term when we find plain error in the record calculated to injure the defendant.

The defendant was indicted for murdering his wife on the first day of October, 1889. The case which is claimed to have been made out by the Government is substantially as follows: "The defendant and his wife resided with her mother on Eighth Street between D and E south, and on the evening of October 1, 1889, they were heard quarrelling in their room. He was announcing his intention to go out and spend the night, and she declared that she would follow him where ever he went. He replied that if she did follow him *he would kill her*, and in that temper they left the house and proceeded northwardly along Eighth Street to Virginia Avenue and in a northeasterly direction on Virginia Avenue towards the corner of C street and Seventh street, and about that time and about that place another person testifies that he heard a conversation of a similar character; that is, heard a man say to a woman, *that he would shoot her; he would be damned if he would not shoot her if she did not go back*; and finally the parties reached C street and proceeded along C street to about as far as the third tree-box. Another witness then heard him repeat the declaration that if she followed him *he would kill her*, and finally he saw him raise his hand and fire, and she fell. She was carried

home and on the tenth of the month died in consequence of the wound.

The theory of the defense is suicide; and there are one or two points relied upon as tending to establish that theory. It appears that before the marriage of the defendant with his wife, who was killed, or who shot herself, the defendant had illicit relations with another woman, and his wife was intensely jealous of him in that regard, and had in all probability been suspecting him that evening of an intention to visit the woman in question, and, as confirming that fact, they say that he was walking in the direction of the residence of that woman on the occasion of the trouble. It is claimed by the defense that, in a paroxysm of jealousy, the wife took her own life.

The Government, on the other hand, claims that the very fact of the deceased following him excited him into an ungovernable fury and thereupon, and in the heat of passion, he committed the murder.

At the trial, there were a number of exceptions taken to the rulings of the court, in excluding testimony and permitting testimony to be received. Some of them are admitted not to be well taken. As always happens, they were taken in the hurry of the trial but have been abandoned. Others are objections taken during the trial but which were obviated by subsequent rulings. None of them have been insisted on in the argument and it is not necessary for us to examine them.

One of the most important witnesses on the part of the prosecution was one James A. Shreeve, who had formerly been a resident of Washington, and who claims to have been an eye witness of the tragedy. This case has been tried twice. He was not examined on the first trial. He says that he purposely concealed his knowledge of the affair. He left Washington and went to Chicago to live, and was summoned and brought here as witness on the second trial. Upon the cross-examination of Shreeve he was asked the question, "Where are you stopping?" and that question was ruled out on objection. That is alleged to be error, and is the subject of the first exception that has been discussed. On the argument it was claimed that the defense had the right to know, and show to the jury, all about the antecedents and associations of the witness. If that was the object of the inquiry, I have no doubt that it was a legitimate inquiry, and if that had been stated to be the object, we take it for granted that the judge who tried the case would have allowed an answer to be given. But it becomes

a little doubtful, when we look at the colloquy between counsel accompanying this offer, whether that was, or not, the object. It appears, from this colloquy, that the attorney for the United States claimed that this witness was shadowed by several persons as soon as they became advised of his arrival in Washington, and in consequence he changed his residence. Counsel for the defense stated that they had people engaged in looking after his antecedents, from which it seems to have been a not unreasonable suspicion that the object of this inquiry was to put the defense upon the track of witnesses who might discredit Shreeve. Now, it is perfectly allowable to interrogate a witness as to his antecedents and associations. It does not seem to be a matter of right, however, to interrogate a witness simply to enable the interrogator to hunt up evidence as to himself and his character. This rule has been laid down by the Supreme Court, and they have laid down a still broader rule, which is, that while cross-examination, as to matters that relate to the main issue, is a matter of strict right, yet when it relates to the credibility of the witness, the scope of it is to be governed by the discretion of the trial justice, and his ruling upon such questions is not reviewable. That subject was discussed by the Supreme Court in the case of *Storm v. United States*, 94 U. S., 76. This was an action upon a bond given to secure the performance of a contract to furnish certain quartermaster supplies to the Government. On the contractor's failure, the agent of the Government went into open market and bought the supplies required, and this suit was brought upon the bond to recover the difference in price. The counsel for the defense asked of the witness the names of the parties from whom he bought the supplies, or certain parts of the supplies, and that was objected to and ruled out. The Supreme Court say: "Seasonable exception was taken by the defendants to the ruling of the court, excluding the question propounded to the witness called by the plaintiffs, of whom he purchased the quantity of oats which he furnished the United States. Three grounds are suggested to show that the defendants were entitled to have an answer: (1) That the answer might have affected the credibility of the witness. (2) That the defendants, if the name of the seller of the oats had been given, *might have called him as a witness, and perhaps might have proved by him that the price paid was not as great as represented*, or that a less quantity than that charged had been delivered. (3) That the answer might have been shown that persons

had an interest in the sale of the oats who are prohibited by the contract from having any share in furnishing such supplies."

"None of the reasons assigned to support the exception are entitled to any weight, when considered in connection with the explanations given in the bill of exceptions. Evidence of an undisputed character had previously been introduced, showing that the requisitions for such supplies were not in excess of the quantity prescribed by law, and that the United States did not purchase and pay for any greater quantity than that specified in the requisitions, and that the purchases were made in the open market, and that the prices paid did not exceed the fair market value of supplies purchased."

"Litigants ought to prepare their cases for trial before the jury is impaneled and sworn; and, if they do not, they cannot complain if the court excludes questions propounded merely to ascertain the names of persons whom they may desire to call as witnesses to disprove the case of the opposite party. Courts usually allow questions to be put to a witness to affect his credibility; but it is plainly within the discretion of the presiding judge to determine whether, in view of the evidence previously introduced, and of the nature of the testimony given by the witness in his examination in chief, it is fit and proper that questions of the kind should be overruled, and to what extent such a cross-examination shall be allowed."

We think, therefore, in the first place, that there was no error in disallowing the question for the reason that the object of it was not made plain, and it was at least within the power of counsel by a single addition, if they desired it, to say that they wished to show that the witness was consorting with thieves, or disreputable characters, or such like, and that his character was affected thereby; and for the further reason that it seems to be plainly in the discretion of the court how far the cross-examination, going to credibility, shall go. The same thing is said in the Supreme Court in two other cases, viz.: that of *Rea v. Missouri*, 17 Wall., 532, and *Johnston v. Jones*, 1 Black., 209. It does not seem therefore, to us, that this was an error that we can review.

Then come the following exceptions, Nos. 5, 8, 9 and 10, relating to questions addressed to Officer Henry, as to what the defendant did at the time that he was arrested. For example, "Did he not begin to cry soon after you put your hands on him?" "Did he not say, in response to the question as to what you arrested him for, that he did not shoot his wife?" Now, the ob-

vious objection to those questions would be that they would allow the defendant to make testimony for himself by his own declarations and conduct. It is said, in argument, that the language and conduct accompanying an act, are explanatory of it, as a part of the *res gestae* and are always admissible. When an act is admitted to be done, and its import is doubtful, then the rules of evidence permit such testimony. For example, when the proof is about the act of taking possession of property, and the question is whether the party took possession with a claim of right, or as a tenant of some one, the declarations accompanying the act are of course admissible, as showing the meaning and intent of the transaction. But in this case, it is quite obvious that under no rule of evidence can the defendant be allowed to put in his own declarations, because they go, not to the character of his act, but to the denial of the act itself. Of course the Government can prove anything that he said which was adverse to his defense.

A kindred question was addressed to Fenwick. It was in reference to the defendant's conduct at the time or about the time of the shooting, and the endeavor was to show that he was in mental distress. That was putting in his conduct as evidence in his own defense and also putting in evidence the opinion of a witness as to what that conduct indicated.

Another exception was to the exclusion of a question to Ruth Turner, the sister of the deceased, when she testified that she heard the same threats that her mother had testified to when the defendant and the deceased were in their room. The question was: "You did not think it amounted to anything, did you?" It was simply asking the opinion of the witness. She could be asked whether the threats were made in an angry manner or a playful manner, but her opinion as to whether the threats amounted to anything does not seem to us to have been admissible.

Exception 22 is to the disallowance of a question propounded to Dr. Crook, who was called for the defense. He is one of the surgeons who attended the deceased. The question is: "I will ask you if you did not say on the previous trial that if no obstruction had intervened the ball would have passed in, coming out a lower point?" This question was not allowed to be asked. The first objection to it is that it is obviously cross-examination, and he was the defendant's own witness. And in the next place it is an attempt to show what he testified to on a former trial, which is never allowed except when the witness is dead, or has departed from the jurisdiction

and cannot be produced. When he is present he must give his present knowledge of it and not testify to what he said before. And when it is stated that the object of an inquiry was to simply refresh his memory by a reference to what he said before, the answer is, that he can only refresh his memory by reference to some record or entry or memorandum and not by hearing his former oral testimony repeated to him.

Exception 24 is to the exclusion of evidence to the effect that some *six months before the shooting*, and *three months before the marriage of Hattie Cross* with the defendant, she bought a revolver and made some declaration, as to her intention, under certain circumstances to use it upon herself. The court excluded that because the testimony was too remote, and could not have any sort of bearing upon the transaction; and we think properly.

Exception 28 is to the exclusion of an answer of Dr. Hamilton to a question propounded to him on the former trial. He was sworn upon the former trial and his testimony reduced to writing.

It was agreed by counsel that it should be read on the second or recent trial and the question asked him was: "Can you tell us from your knowledge and experience of gunshot wounds, whether that pistol was fired close to the head or not?" It seems a little uncertain whether that should not have been admitted, but it seems to us entirely immaterial whether this pistol was held close to the head of the deceased or not. The argument is that if it was close, Hattie must have held it herself. We are totally unable to see the materiality of the inquiry. It was equally possible for the deceased or her husband to hold the pistol near her head and it does not seem to us that the question has the slightest bearing upon the issue.

Exception 29 is of the same character as the previous exceptions, as to evidence relating to the conduct of the defendant. His father was asked what his conduct was at the time that he told him of the shooting. That is open to the same objection as the other questions addressed to Officer Henry.

Then there are several exceptions, 30 to 34 inclusive, addressed to an explanation of the object of the defendant in going in a southerly direction after the shooting took place. It appears that he went in that direction. He went first to the house of his mother-in-law and told her that Hattie had shot herself. They started out together, and after he went with her a little

way, his mother-in-law accusing him of the crime, she says that he ran south. The object of these inquiries was to show by the father that he went to his residence and afterwards came back to Eighth street near the dwelling of Mrs. Turner, and afterwards he started to go to his brothers'. The Government having proved that he was seen by the officer leaving his father and going in a southerly direction, it was claimed that he was really taking flight in the direction of the Long Bridge, and the offer was to show by the father that he was going, at his request, to the house of his brother, who lived in the direction of the Long Bridge, a considerable distance from where he was standing, and was to return to him. Now, while the evidence was objected to and partially excluded at first, yet, in point of fact, it did get in. The father was really allowed to say that the defendant started in the direction of his brother's house and was to return to him, and he was waiting there for him to come back. So that it was really not excluded, although the court seems at first to have thought it objectionable. The father did get the evidence in, at least so far as to say that he had seen his son start off in the direction of his brother's and that he afterwards returned to him. But as the officer approached him then, he took flight, and the evidence would not, of course, explain that.

There is one exception which probably is well taken, although we think the effect of it is very slight. Mrs. Turner had testified, in chief, as to the different threats which she had heard addressed by the defendant to her daughter in their room. Of course, it was important to discredit Mrs. Turner, and her next door neighbor, a man named Richard Williams, was offered, and testified that he occupied the adjoining house; that he was sitting in the middle of his house, eating his dinner or supper at the time that Cross went there. He was asked whether he heard Mrs. Turner say to Cross, what she testifies that she did say: "You are a liar, you shot her yourself; you said that you were going to do it." That evidence was excluded. The object, of course, was to discredit Mrs. Turner, and throw some doubt upon her testimony as to the threats that she testified that she had heard. The answer in the negative, in reply to the question was a very feeble contradiction of Mrs. Turner. It could have had but a slight bearing upon her credibility, and if nothing further than that appears in the case, we do not think that it is sufficient to justify the court in treating it as a ground of reversal, although it does strike us that the evidence would have been properly ad-

mitted. We shall proceed further to consider the other features of the case.

Exception No 42 was to the admission of the record in the marshal's office as to the height of the defendant. It seems that he was called into a room in the marshal's office, and his measurement taken, and that was done after he was convicted at the first trial. It appeared that Mr. Carroll was the clerk, and testified that there is a book kept in the office of the marshal in which all measurements of convicted persons are kept, and a description of the convicted persons written down and furnished to the Department of Justice. They are required to keep that book and the practice was for somebody to take the measurement and call it out to him, and he reduced it to writing. He identified the book produced as the one used, and then gave the measurement of the defendant. That was objected to on several grounds. First, it was said that it was hearsay on the part of Carroll, because he did not take the measurement; he simply took down what the other person called out to him. Upon looking at the testimony itself, we find that this question was addressed to him: "Did you know it at the time that it was taken," and the answer is, "Yes, sir." This seems to be an assertion of personal knowledge of the fact. If that be the case, it removes the objection, because that is personal knowledge; not mere hearsay. But independently of that, it seems to me, in the light of the law relating to private entries made by persons in the course of duty, the evidence would be admissible, even assuming that Carroll simply took down the measurement made by another man without verifying it himself.

In a complicated transaction in which two persons participate, I do not think that it is essential that each one should have personal knowledge of all the steps in the transaction. For example, a merchant in his store in selling goods calls out the price and the character of goods, and his clerk writes them down. That is in the regular course of business, and it would not be necessary that the clerk should follow the merchant around and to have personal knowledge of all that passed between him and his customer. As I say, it is not necessary that each person connected with the transaction resulting in an entry made in the due course of business and in the discharge of duty should have such personal knowledge, but it is simply important that the entry should have appeared to have been made in the regular course of business, and in the light of that rule it would seem that this entry would be admissible. See

notes to *Price v. Earl of Torrington*, 1 Smith's Leading Cases. But there is another ground upon which I consider that it is admissible, and that is, that it is a record kept in a public office and in the discharge of a public duty and that it comes under the rule laid down by the Supreme Court in the case of *Village of Evanston v. Jessie Gunn*, 99 U. S., 660, in which Mr. Justice Strong, delivering the opinion of the court, says:

"They come, therefore, within the rule which admits in evidence 'official registers or records kept by persons in public office, in which they are required, either by statute or by the nature of their office, to write down particular transactions occurring in the course of their public duties or under their personal observation.' To entitle them to admission it is not necessary that a statute requires them to be kept. It is sufficient that they are kept in the discharge of a public duty."

We had a very similar question in a recent insurance case where there was offered in evidence an abstract from the return of the naval hospital, in which was stated the condition of health of the party whose life had been insured, and the object of the record was to show that he had falsely represented the condition of his health. These records are kept in naval hospitals and copies sent to the Navy Department and abstracts are obtained from the Navy Department, and a certified copy of such an abstract as made at the Department, was introduced into evidence in the case. We found a case almost identical, which was decided by Lord Ellenborough in 5 *Espinasse*, 118, in which it was held that a book containing a copy of returns made by officers of ships of persons dying on board to the inspectors of wills was admissible to prove a death.

It appears in the present case, that this record was required to be kept for the purpose of supplying the Department of Justice with a description of convicted persons, which corresponds very nearly to the case cited from *Espinasse*, in which the record of a death was transmitted to the ecclesiastical court for the purposes of administration. We do not think that the record in question was obnoxious to the objection that I have mentioned.

But there is still a further objection made to it and that is, that it is an effort to compel the defendant to give evidence against himself. It must be remembered that when this measurement was taken, the defendant was convicted, and, therefore, it was not taken with the view to a trial or for use upon a trial. There does not

seem to be any reason why it could not be used after it had been taken under the circumstances stated. It could not be contended that the knowledge of the size or height of a man acquired in any other way, for instance by a tailor, could not be used when at the time it was not taken for the purpose of being used as testimony, and it seems to us that a record taken as this was, for a lawful purpose and under the rules of the office might be made use of afterwards. It does not seem to us that it is compelling the defendant to give evidence against himself, although some cases that have been cited to us go very far in that direction. There was one case holding that it was error for the prosecuting officer to compel the prisoner in court to put his foot into a vessel filled with mud in order to measure it and identify it. That is well enough. It was held in another case that where the officer compelled the defendant to put his foot in certain tracks that were discovered, in order to identify him, that was wrong, as it was compelling him to give evidence against himself, and evidence of that kind, so secured, could not be used. We think that is going very far; it is rather too fine. What would be the consequence if such evidence should be entirely excluded? You could not compel a person after his arrest to empty his pockets and disclose a weapon, when the most vital evidence on the part of the Government, in a homicide case, is the possession of the deadly weapon. Could you not compel him to open his pocketbook and exhibit papers that might be conclusive in the case of a forgery, or anything of that sort? We think that officers having a prisoner in custody have a right to acquire information about him, even by force, and that, for example, when his photograph is taken or his measurement taken, it is simply the act of the officers and is not compelling him to give evidence against himself. Besides it is hard to see how the result of this trial could have been avoided in any way by the exclusion of this evidence. It is admitted on both sides that there was a difference in height between these parties and that the wife was a little taller than her husband. But not the slightest light is shed upon the issue in the case by any evidence as to the comparative height of these parties, so far as we can see, after examining the whole record of the testimony.

Now, another ground for the motion for a new trial is the alleged misconduct of the prosecuting officer. The misconduct in question is alleged to be of two kinds—first, what occurred in the course of the trial, within the

observation of the court, and next, misconduct which is only shown by reference to antecedent and extraneous circumstances and which does not appear upon the face of the proceedings.

First, it is objected that the District Attorney announced, in his opening statement, his intention to show, by the dying statement of the deceased, the fact that her husband had shot her, and then they offered evidence tending to prove it, but, as the defense say, totally insufficient to lay the foundation for introducing such a statement. Then the prosecuting attorney announced that he had other witnesses by whom he might be able to lay a better foundation. The record shows that the testimony of Mrs. Turner, the mother of the deceased, was first taken, and then she was recalled for the purpose of introducing the alleged dying declaration. The next morning after the shooting she had a conversation with her daughter about dying; it was about 6 o'clock, just the time for her to take her next medicine. She said that she did not want to take it, and "I said, Hattie, take your medicine; I says you do not want to die and leave your mother and your little sisters and brothers, and she says, 'Well, you have a plenty left.'" —She was asked whether her daughter took the medicine, and she said that she did. On the third morning after the shooting she had another conversation with her: "We had a little pet dog named Grant; the little dog came into the room around her bed, and she called him and she says, 'Grant! Grant!' she says, 'even the poor little dog don't know his name since I have been sick; poor Grant,' she says, 'will not have any one to teach him his name any more.' She was shot Tuesday night, and the first conversation that took place was on Wednesday morning and the second conversation took place on Thursday morning." Some Christian people, she testified, came out and talked with her daughter, and the minister asked her if she trusted in the Lord, and she said, "I have no one else to trust in;" she says, "You know I can't trust the devil." Then she was asked how long she was at the house before she became conscious and she said it was about 10 o'clock, and she remained conscious then off and on all night, and she remained conscious up until Friday afternoon of the same week that she was shot, because she noticed that she knew everybody that came in the house until Friday afternoon until about 4 o'clock and then she began not to know people like she had done. She first said something about the shooting at about 10 o'clock the same night and again on the next

morning, and the minister first came to talk with her the next day after she was shot. The trial justice thought that that was not sufficient for the admission of the alleged dying declaration, probably on the ground that her consenting to take the medicine indicated a hope, at least, on her part, of recovery. This testimony indicates a mind certainly clear at intervals, and what she said on those occasions was perfectly rational, and it comes very near indicating a consciousness of approaching death. One word more from her would have made it sufficient. If she had refused to take the medicine, saying, "that it is no use, I am dying," her statement would have been admissible. Now, looking at that alone, we cannot see that there was any misconduct on the part of the District Attorney in offering the evidence. It was doubtful enough for the court here to exclude it and the court concluded, on the whole, to exclude it. So far, there has been nothing that amounts to misconduct on the part of the District Attorney. This was followed by the announcement that he would discharge the witness under the court's ruling that this evidence was insufficient, and he thought that he had other witnesses *by whom he might lay a better foundation.*

I should have stated here that among the grounds assigned in the motion for a new trial is the following : "Because of gross misconduct on the part of the prosecuting attorney during the trial to the prejudice of the defendant." It does not specify the misconduct and the only specification that we have of it is found in the affidavit of Cross, in which he says, "that he is advised and believes that the opening remarks of the assistant attorney for the United States, to the effect that the affiant's wife had made a dying statement in which she said that affiant had shot her, and they offered to prove such dying declarations by the witness Emma Turner, and the remarks of the District Attorney after such offer had been excluded by the court, that he had other witnesses by whom he could strengthen his position, all tended to, and he verily believes did, prejudice his case with the jury ; that he is advised and believes that when the above statements and offer by the counsel was made that they *had been informed by the attending surgeon in charge of the case* that attending surgeon in charge of the case that affiant's wife could not make and was totally unable to make a rational or connected statement." The affidavit does not correctly represent the declaration of the District Attorney. He simply said that he had other witnesses by whom he might be able to *lay a better foundation*; not

strengthen his position generally, but lay a better foundation, which means, simply, to prove more satisfactorily that the deceased, at the time of her statement, was in a condition of mind to make a rational statement and also that she then expected certain death. The objection is, that the District Attorney should make such a statement without having any witnesses, which is evidenced by the fact that he did not produce any witnesses. He stated that he might be able to lay a better foundation, and his action in this regard does not seem to us to be so clear an act of misconduct as could prejudice the case. He did not assert that he intended to prove the dying statement by any other evidence, but simply to lay a foundation by proving the condition of the deceased. But there is an answer, beyond that, to the objection. It is a rule well recognized by the Supreme Court and by all the authorities that anything that occurs during a trial, which might prejudice the accused, he must call attention to, and have passed upon, by an instruction of the court. There may be cases where the rule may be dispensed with, but in this case it was very easy for the counsel to ask the judge to say to the jury that they must consider the evidence offered, of dying declarations, to have been valueless and as excluded entirely from the case. Now that is the rule as to the manner in which any misconduct of that sort should be redressed, as laid down in several cases. In the first place, it is discussed at considerable length in Thompson on Trials, beginning at page 743, and although he states that in some jurisdictions the defendant is allowed to make this objection to the conduct of the prosecuting attorney on a motion for a new trial, the better rule is shown to be, that it should be done during the trial, so that it can be redressed at once. The Supreme Court takes this view of the case in Crumpton v. The United States, 138 U. S., 361. They say : "The second assignment of error is clearly untenable. It appears that during the argument of the case the defendant's counsel said to the jury : 'Either the defendant or Burt (a Government witness) is guilty of this crime. I will show you that Burt is guilty, and, therefore, the defendant is not.' In reply to this the District Attorney, in his closing argument said : 'The issue then is squarely made by Mr. Neal that either the defendant or William Burt is guilty of this crime. I have shown you that Burt is not guilty; therefore, by his logic the defendant is guilty.' No objection was made at the time to this argument, nor was the court requested to interrupt it, or caution

the jury against its force; and no exception appears to have been taken. There is no doubt that, in the excitement of an argument, counsel do sometimes make statements which are not fully justified by the evidence. This is not such an error, however, as will necessarily vitiate the verdict or require a new trial. It is the duty of the defendant's counsel, at once, to call the attention of the court to the objectionable remarks and request its interposition, and in case of refusal, to note an exception."

In the case of *Hopt v. Utah*, 120 U. S., 430, it appears that the counsel for the prosecution alluded to a former trial of the same case which was in violation of the statute. Upon objection being made, the counsel withdrew his remark and the court instructed the jury that they should disregard the same. The Supreme Court said that the action of the attorney in that matter was not a ground for a reversal of the judgment. As far, therefore, as any conduct of the prosecuting attorney apparent on the face of this proceeding is concerned, we do not think that we are called upon to make it a ground for reversal.

Another specification, however, is found in the twelfth reason assigned for a new trial. "Because of misconduct on the part of the prosecuting attorney in attempting to prove by the mother of the deceased the dying declaration alleged to have been made under circumstances which to him were known to have afforded no sufficient grounds for the admission of such declarations." The ground for this is shown in an affidavit filed, stating that before the offer to prove the alleged dying statement, Dr. Crook, the surgeon, had informed Mr. Armes, assistant attorney, that the woman was not capable at any time, from the time that she was shot, of making a rational statement as to the occurrences at the time of the shooting, and it was alleged that, with that knowledge, the District attorney offered the above statement to the prejudice of the accused. Now, there have been other affidavits, counter affidavits filed on the part of the District attorney, and I will state the substance of them without undertaking to determine that controverted statement of fact. The District attorney claims that Dr. Crook, when he first visited this woman, was of the opinion that she was capable of making a rational statement and that he so testified before the coroner's jury.

There is also filed the affidavit of the coroner himself to the same effect, i. e., that Dr. Crook testified before him that the woman was capable of making a rational statement. The Gov-

ernment further says that, during the progress of the first trial, it was advised that Dr. Crook had changed his opinion since the autopsy and had come to the conclusion that no person with such a wound, i. e., with a ball traversing the brain, was capable of making any rational declaration. He was sought by the District Attorney, and he informed the latter that he had so changed his opinion since the autopsy. The District Attorney claims, however, that he had a right to rely more upon an opinion, founded on a personal inspection of the woman, than a mere medical abstract opinion given afterwards—that is, a medical opinion to the effect that with such a wound no person could make a rational statement. Now, if he seriously believed that, and we have no reason to doubt that he did, we are not able to see why the District Attorney had not the right to raise that question and present it to the jury. After the counsel for the defense had ascertained that fact from Dr. Crook and the District Attorney was advised that he would so testify, he had a right to bring before the jury the question whether the first opinion of Dr. Crook and the evidence of Mrs. Turner were not sufficient to satisfy them, notwithstanding the medical opinion expressed afterwards—of the doctor—that the woman was incapable of making a rational statement. There was only one way by which he could do that. He could not summon Dr. Crook and examine him, because he knew that his testimony was adverse to him. He could not cross-examine his own witness. But after this testimony had been admitted as *prima facie* evidence, it was in the power of the defense to produce Dr. Crook, and then it would have been competent for the District Attorney to cross-examine him and show the fact to be that he had previously testified to the effect that I have already mentioned. The decision of the court was that the foundation had not been laid, but if the decision of the court had been in favor of permitting the testimony to be taken, then we cannot see why other testimony could not have been introduced in that way; and it does not strike us that there was any misconduct on the part of the District Attorney in attempting to introduce the evidence as it was done. But there is a broader question behind all that. It is contended here that the District Attorney offered this evidence with the knowledge that it was false; in other words, it is assumed that he was bound to take Dr. Crook's later opinion as conclusive of the question, and it assumes that he thereafter offered the evidence with knowledge in advance that it

was not true. Now, the question is, can the court, on a motion for a new trial, try the District Attorney for errors in the discharge of his duty? Can the court go into an inquiry as to how far the prosecuting officer is justified by the evidence in his possession in attempting to prove the guilt of the accused? The cases all relate to the conduct upon the trial. For example, where a district attorney gives his personal belief of the guilt of the accused or states it as within his personal knowledge that the defendant is guilty, when the evidence to support that belief has not been admitted, these are plain cases of misconduct attending the trial. But if it was allowed to institute an inquiry of a character that I have mentioned, there is no case in which an affidavit could not be offered, after the trial, to the effect that the District Attorney had been heard to say that he had no confidence in the witnesses he had produced, or that he knew that the witnesses were not worthy of belief. We find no authority to justify a court in a proceeding of that kind. The District Attorney has assumed the responsibility of presenting the case according to his judgment, but for any irregularities in the course of the trial he is of course open to the censure of the court. In the first trial of this case, it was thought by the court, in reviewing the case, that he had transcended the bounds of his duty during the trial, because, first, he proposed to introduce the dying statement without having laid any foundation for it. He asked Mrs. Turner about it without making the proper preliminary inquiry, and that was ruled out. Later on, he made a like offer in the case, and three times attempted to press the inquiry without offering any further testimony and the court thought, on the face of the proceedings, that that was improper. I am not sure but that in a case of that sort the reviewing court properly granted a new trial. The general rule however, as I have already stated, is, that when irregularities of that kind occur, they ought to be corrected on the instant, by an application to the trial justice. We are unable therefore, to say that in the alleged misconduct of the prosecuting officers there is sufficient ground for reversing the proceedings below.

Another ground for the motion was newly-discovered evidence. There are some two or three affidavits filed as to the mental and physical condition of the woman. Those were upon the question of misconduct. After that there were filed four affidavits, two of them relating to the same subject and two others on the question of newly-discovered evidence. Now, these

affidavits as to newly-discovered evidence amount simply to this: A witness testifies that he or she had known Shreeve for some time, and he had never said that he knew anything about this transaction. That does not contradict him at all, because he testified in chief that he purposely suppressed the fact of his knowledge, because he did not wish to be called as a witness as his mother had exacted from him a promise before her death that he would not have anything to do with it. Counsel had full benefit of that fact in the argument of the case before the jury. The new evidence does not contradict Shreeve in any particular. Another affidavit is to the effect that the affiant had known Shreeve for some time, and that on one occasion, in a general conversation about this case, Shreeve had said that it was hard to say whether Hattie Cross killed herself or was murdered. The very next sentence in the affidavit destroys the whole effect of that, because it states that he did not speak from *the standpoint of personal knowledge*; that is, he did not profess to say it from personal knowledge, but he simply said, as we may suppose, in reference to public reports of the testimony, that it was hard to tell whether she killed herself or was shot. The effect of this was really to destroy the whole effect of the first statement. But the conclusive objection to all this is that these affidavits only go to affect the credit of the witness. Now, the rule is very well settled that a new trial will not be granted for newly-discovered evidence which simply goes to the credit of one of the witnesses. This is discussed in 3d Graham and Waterman on New Trials at great length.

The last ground upon which the motion is based is the disqualification of one of the jurors, one Boteler. The alleged ground of disqualification is, that he was a non resident of the District and a resident of Maryland. A paper was filed by Boteler himself on that subject in which he states that he is twenty-seven years of age; "That he was born and raised in the State of Maryland, and lived there until about September, 1889, when he left his father's home in Prince George's County and came to the city of Washington to obtain employment, and soon after the first of October, 1889, he was employed by the Phæton Herdic Company of the City of Washington, District of Columbia, and remained continuously in the employ of that company until about the first day of April, 1890, when he left said Herdic Company and was employed by the Columbia Street Railway Company of the City of Washington and District of Columbia, and has been in the employ of said last men-

tioned Company continuously since that and is still in the employ of that Company, and expects to remain with it indefinitely; that since he came to the city of Washington he has resided here continuously, boarding here and having his washing done here and making only occasional visits to his father's home in Maryland, say once in two or three months, and remaining there not longer than one day at any one time; that on the 29th day of October, 1890, he was married in this city to a resident of this city and District of Columbia, and soon thereafter, about the first of April, 1891, commenced keeping house at No. 1233, I street, northeast, in this city, which has been his home ever since, and still is his house; that subsequent to his marriage, and before he commenced keeping house, he resided with the family of his father-in-law in this city, and that when he left his father's home in Maryland, he came to this city and District with the intention of obtaining employment and remaining here indefinitely, as long as he could find employment to suit him; that he has never had any intention, and has no intention now, of abandoning his residence here and returning to Maryland; that long before he was drawn as a juror for the June term, 1891, of the said court, he had formed the intention of becoming and remaining a resident of the said city and District, and that he has never changed his intention, and that at the time when his service as such juror commenced, and before, he deemed himself a bona fide resident of said city and District, and still does; that, as a matter of fact, he voted in the State of Maryland at the election held in November, 1890; that since that time he has claimed no residence in the State of Maryland and does not now, nor has he, as he believes, any right now so to do."

The statute requires that at least two days before the trial the defendant shall be served with a list of the jurors for the purpose of enabling him to inquire into their qualifications; so that as a matter of fact the prisoner always has notice of the jurors who are expected to serve, and when the jurors are called he has a right to interrogate them. If he fails to exercise that right, and after the verdict, one of them has been found to be really disqualified, the question has been made how far he can make use of the disqualification as a ground for a new trial. If the disqualification goes to the personal fitness of the juror, he ought to be able to do so, but if it is simply statutory and technical, there are strong authorities for holding that he ought not to be able to do it. The subject is discussed in Wharton's Criminal Pleading and

Practice, § 846, and there is a strong decision in Georgia on this very question of non-residence. *Costly v. The State*, 19 Geo., R., 614, in which the court say: "And it is well settled both by the authorities of the courts of Great Britain and of this State, that it is too late, after a jury has been sworn, to challenge any of its members, *proper defectum*, or to move to set aside the verdict on that account."

It is not necessary however for us to express any definite opinion on the question, because it seems to us that the juror in question comes fully within the term, "resident" of this District. The qualification is that the juror shall be a citizen of the *United States* and a resident of the *District of Columbia*. A man may be a citizen of a State and retain his political privileges and pay taxes, etc.; but may leave his State, his domicile where he is a citizen, for commercial purposes, and reside for a year or more elsewhere, without losing his rights and privileges, and without acquiring them in his new home, but he is none the less a resident in his new home. A citizen of Maryland, for example, hires a house here for a whole year and perhaps lives here during that year; he certainly is a resident here during that period. He could not be proceeded against here under the attachment proceedings as a *non-resident* of this city. Many things go to make a party a resident of a place, but it is unnecessary to go at length into this question because we have settled it in another case which is not anything like as strong as this. In the case of *United States v. Nardello*, 4 Mackey, 503, it was held that a person who was unmarried and not a householder, who was employed in this city and staid here without any purpose of returning at any particular time to Virginia, where his parents lived, was a resident for the purpose of serving as a juror. The fact that the State allowed the juror to vote does not affect the question of residence at all. We think that under the circumstances he is a resident here and amenable to the responsibilities of a resident, where he is now a householder and the head of a family.

The last subject that was discussed in argument as a ground for a new trial was that the evidence was insufficient to support the verdict and the verdict was against the weight of the evidence. We presume that the same argument was addressed to the trial jury and again to the trial justice on a motion for a new trial. If the evidence submitted on the part of the United States to the jury was true, no question could be raised about its being sufficient. It was clearly

proven by several witnesses that the defendant made threats against the life of his wife only a few minutes or so before she was injured, and although not so clearly proved, there was evidence tending to prove that another witness heard similar threats while the defendant was on his way to the place of the shooting, and finally an eye witness saw him shoot her at the place. He had heard the same threats, and he turned and saw the shot fired. It is hardly necessary to repeat what we have said so often, that we are at a disadvantage in going over written evidence. The court below could see the demeanor of the witnesses in giving their evidence, and of course that is lost when we come to examine the case in this court. We have nothing to see except the cold statement of the witnesses. Of course a case may occur where a court has no difficulty at all in saying that the evidence is not satisfactory, or is overcome on one side by the contradictory testimony on the other. The statement of a witness may be marked by such inconsistencies that no person, whether a judge or otherwise, could believe it; and, so, the evidence on one side may be so overcome by the testimony of other witnesses who have the same appearance of credibility and truthfulness that the court may readily decide the matter upon such evidence. In this case, for example, if there had been two or three witnesses nearer to the place at the time of this occurrence than the particular witness who claims to have been an eye witness, who had, perhaps, heard the same threats made, but had heard the woman say she would kill herself, and had seen her draw the pistol and shoot herself, and, instead of the arm of the defendant being raised for the purpose of shooting, could swear that his arm was raised to prevent his wife from shooting herself, a court would have very little hesitation in saying that a verdict of guilty, founded on such testimony, should be set aside. But that is a very different case from the one under consideration. Shreeve was the first important witness for the Government. There was no proof showing why he should come here from Chicago to swear away the life of this defendant, with whom it appears that he was not even acquainted. Certainly there was no enmity between them. There was no evidence offered to impeach his veracity. He is not contradicted in anything material. His evidence is assailed because it varies from other accounts of the transaction in trifling details about which it would be morally impossible to find half a dozen witnesses to agree. For example, he

says that he was going towards the station where he intended to mail a letter, and his attention was attracted to these two people by the threat that he heard. He passed not very far from four young men who were sitting on the steps of the Coffee Mill, and on his cross-examination he says that he did not observe *them*, and those young men, occupied probably with their conversation, testified that they did not observe *him*. From that it was argued that he was not there at all at the time of the shooting. He says again that he struck and lit two matches and looked at the woman. One of the young men does not remember that anybody lighted a match; one remembers some one lighting one match and another witness comes forward and testifies that *he* lighted a match, and all this is relied upon as further evidence that Shreeve was not there. It will be seen that most of the evidence offered for the defense is of this character, inconclusive, and insufficient to overcome the direct testimony of the witness Shreeve.

A somewhat elaborate argument is founded upon a great many slight and inconclusive circumstances as to the improbability of the statements of the witness referred to. It is claimed that the woman herself had made threats against her own life; she had said that if things did not suit her that she would kill herself. It is argued that all these things indicate the probability that she really took her own life in a fit of jealousy. The argument however takes no notice of the other probability that the defendant, from the fact that his wife was following him, in a fit of jealous passion, was naturally wrought up into a state of anger which impelled him to do the very thing that he is charged with doing. We can well understand that. The argument formed on probabilities is not sufficient to over-bear the direct testimony offered on behalf of the Government. *On the whole case we think that the judgment should be affirmed.*

EXECUTION—Sale.—A trunk purchased at an execution sale was afterward found to contain certain bonds and other choses in action belonging to the judgment debtor. Held, that the purchaser did not take title to the bonds, as at common law choses in action generally could not be taken in execution; and this rule still prevails except where changed by statute. *Crawford v. Schmitz, Supreme Court of Illinois, Nov. 24, 1891, 29 N. E. Rep., 40.*

Law Blanks at the Law Reporter 503,

Legal Notices.**Rule of Court.**

RULE 20. * * * * Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

FIRST INSERTION.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of JAMES H. DOCKETT, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of February, 1892.

A. B. HAGNER, Justice.
7 Carusi & Miller, Proctors. 917 F St. n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

February 12th, 1892.

In the matter of the Estate of CHARLES F. MOSEBY, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased, has this day been made by Mary S. Nash.

All persons interested are hereby notified to appear in this Court on Friday, the 11th day of March next, at 1 o'clock P. M., to show cause why Letters of Administration on the Estate of the said deceased should not issue as prayed.

Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.

7 Gordon & Gordon, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Ellen C. Gray et al. { No. 13,899. Equity Docket.
vs.
Ralph L. Galt et al.

Upon consideration of the report of John P. Sheppard, receiver, filed herein this day setting forth the sale by him as receiver in this cause to Margaret E. Selby for the sum of fifteen hundred dollars, of lot number 603 in Uniontown in the District of Columbia, according to the original plan of Uniontown, it is this 6th day of February, 1892, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 7th day of March, 1892.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter in the meantime, the first publication to be made within one week from this date.

A. B. HAGNER, Justice.
True copy. Test: J. R. Young, Clerk.
7 By L. P. Williams, Asst. Clerk.
[Filed February 6, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
(The 18th day of February, 1892.

Charles C. Simmons } vs. { No. 18,861. Eq. Doc. 33.
Lucretta Simmons. }

On motion of the complainant, by J. Thomas Sothonor, his solicitor, it is ordered that the defendant cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce, *a vinculo matrimonii*, on the ground of willful desertion and abandonment for the full and uninterrupted space of two years of complainant by the defendant.

A. B. HAGNER, Asso. Justice.
True copy. Test: J. R. Young, Clerk.
7 By L. P. Williams, Asst. Clerk.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

Holding a Special Term for Orphans' Court Business.

February 12th, 1892.

In the matter of the Estate of BENJAMIN B. MILLER, late of Laramie County, Wyoming, deceased.

Application for Letters of Administration on the Estate of the said deceased, has this day been made by Bellie Miller, his widow, and Benjamin Miller and others, children and next of kin of the decedent.

All persons interested are hereby notified to appear in this Court on the Eleventh day of March next, at 11 o'clock a. m., to show cause why Letters of Administration on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER and Washington Post, previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
7 No. 4832. Ad. Doc. 18. John Lyon, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

February 12th, 1892.

In the matter of the Estate of JOHN RICHARD, Senior, late of Wyoming Territory, deceased.

Application for Letters of Administration on the Estate of the said deceased, has this day been made by Peter Richard, and others, children and next of kin of the decedent.

All persons interested are hereby notified to appear in this Court on the Eleventh day of March next, at 11 o'clock a. m., to show cause why Letters of Administration on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Washington Post previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
7 No. 4833. Ad. Doc. 17. John Lyon, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

February 11th, 1892.

In the matter of the Estate of ANNA KEY LAIRD, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Mayhew Plater and Charles M. Matthews,

All persons interested are hereby notified to appear in this Court on the 11th day of March next, at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
7 No. 4822. Ad. Doc. 17. H. S. Matthews, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

February 12th, 1892.

In the matter of the Estate of ANTOINE JANIS, late of Sheridan County, Nebraska, deceased.

Application for Letters of Administration on the Estate of the said deceased, has this day been made by Antoine Janis, Jr., and others, descendants and next of kin of decedent.

All persons interested are hereby notified to appear in this Court on the Eleventh day of March next, at 11 o'clock p. m., to show cause why the said Letters of Administration on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER and Washington Post previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
7 No. 4831. Ad. Doc. 17. John Lyon, Proctor.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of JOSEPH LOCHBOEHLER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of February, 1892.
ROBERT A. PHILLIPS,
1418 New York Ave.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 16th day of February, 1892.

Anna Doyle, plaintiff, } No. 18,630. Eq. Docket 88.
vs. }
Jacob Dixon Doyle, defendant. }

On motion of the plaintiff, by Mr. J. M. Vale, her solicitor, it is ordered that the defendant, JACOB DIXON DOYLE, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is a divorce from the bond of marriage for desertion for the period of two years last past.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk.
By L. P. Williams, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 16th day of February, 1892.

E. Wesley Kirby } No. 18,650. Eq. Docket 88.
vs. }
Emeline M. Kirby. }

On motion of the plaintiff, by Mrs. Belva A. Lockwood, his solicitor, it is ordered that the defendant, EMELINE M. KIRBY, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for divorce on the ground of willful desertion for the uninterrupted space of more than two years.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
By M. A. Clancy, Asst. Clerk.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters Testamentary on the personal estate of ELIZABETH B. DYER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of February, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day of February, 1892.
JAS. L. TAYLOR,
5 Care Samuel Maddox, Proctor, 462 La. Ave.

SECOND INSERTION.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

The 5th day of February, 1892.

Augustus F. Rodgers et al. } No. 18,679. Eq. Docket 33.
vs. }
Montgomery Meigs et al. }

On motion of the plaintiffs, by Abert & Warner, their solicitors, it is ordered that the defendant, ELIZABETH RODGERS, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to have a new trustee appointed in the place and stead of Montgomery C. Meigs, deceased.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
By M. A. Clancy, Asst. Clerk.

[Filed February 5, 1892. J. R. Young, Clerk.]

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters of Administration on the personal estate of EMILY H. REED, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of January, 1892.
THE WASHINGTON LOAN & TRUST CO.
6 John B. Larner, Proctor. By B. H. Warner, Prest.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of JOHN ROME, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23d day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23d day of January, 1892.
JOSEPH R. BROWN,
6 John A. Barthel, Proctor. 937 I St. n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of CATHARINE V. COBB, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of February, 1892.
NEHEMIAH COBB,
6 1012 10th St. n. w. City.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

February 5th, 1892.

In the case of Henry V. Parsell, Administrator of NORRIS PETERS deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 4th day of March, A. D. 1892, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: L. P. WRIGHT,
6 Register of Wills for the District of Columbia.
No. 3581. Ad. Doc. 15. John E. Kenna and
John E. Kenna and
Martin F. Morris, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

February 6th, 1892.

In the matter of the Estate of CATHARINE McDONOUGH, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased, has this day been made by J. William Lee, a creditor of said estate.

All persons interested are hereby notified to appear in this Court on Friday, the 4th day of March, next, at 11 o'clock a. m., to show cause why Letters of Administration on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT,
6 Register of Wills for the District of Columbia.
No. 4809. Ad. Doc. 17. Geo. E. Johnson, Proctor.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

Holding a Special Term for Orphans' Court Business.

February 5th, 1892.

In the matter of the Estate of ELIZABETH A. TOWNSEND, late of Washington D. C., deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration c. t. a. on the Estate of the said deceased has this day been made by Samuel H. Ellis, Executor named in said Will, who prays that such Letters may be granted to Richard Sylvester.

All persons interested are hereby notified to appear in this Court on Friday, the 4th day of March next, at 10 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration c. t. a. on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter, the Evening Star, of Washington, D. C. and the New York Herald, previous to the said day.

By the Court.

A. B. HAGNER, Justice.

Test:

L. P. WRIGHT.

Register of Wills for the District of Columbia.

No. 4815. Ad. Doc. 17. C. Maurice Smith, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

February 5, 1892.

In the matter of the Estate JOHN GRINDER, late of Washington, D. C., deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Edward M. Grinder.

All persons interested are hereby notified to appear in this Court on Friday, the 4th day of March next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Washington Post previous to the said day.

By the Court.

A. B. HAGNER, Justice.

Test:

L. P. WRIGHT.

Register of Wills for the District of Columbia.

No. 4812. Ad. Doc. 17. J. J. Darlington, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

February 5th, 1892.

In the matter of the estate of MARY JANE ROSS, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased, has this day been made by Irving Gibson.

All persons interested are hereby notified to appear in this Court on Friday, the 4th day of March next, at one o'clock p. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER and Evening Star previous to the said day.

By the Court.

A. B. HAGNER, Justice.

Test:

L. P. WRIGHT.

Register of Wills for the District of Columbia.

No. 4759. Ad. Doc. 17. J. H. Adrians, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Caroline Amelia Shedd vs. No. 18,445. Equity Doc. 82.

Frederick R. Slater et al.

Upon consideration of the report of the trustee filed in this cause this day, it is this 2d day of February, 1892, ordered and decreed that the sale of the said sub lot fourteen (14) in square north of square two hundred and forty-two (242), as reported by the trustee, be ratified and confirmed, unless cause to the contrary be shown on or before the 2d day of March, 1892.

Provided a copy of this order be published in the Washington Law Reporter once in each of three (3) successive weeks prior to said date.

The amount of the said sale as reported is five thousand five hundred and eighty-seven dollars and sixty-five cents (\$5,587.65).

A. B. HAGNER.

True copy. Test: J. R. Young, Clerk.

By L. P. Williams, Asst. Clerk.

[Filed February 2, 1892. J. R. Young, Clerk.]

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

The 5th day of February, 1892.

William B. Moses and William H. Moses, partners, trading as W. B. Moses & Son. No. 32,482. At Law Docket 36.

vs. Whitman Dunbar.

On motion of the plaintiff, by Mr. W. L. Cole, his attorney, it is ordered that the defendant, WHITMAN DUNBAR, cause his appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to recover a judgment against the defendant for the sum of two hundred and ninety-two and $\frac{1}{2}$ dollars, with interest thereon from the 20th day of January, 1891, and costs of suit, and to condemn for satisfaction thereof certain goods and chattels which have been levied upon and seized under the writ of attachment in this case.By the Court. M. V. MONTGOMERY, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**
The 8th day of February, 1892.

George A. Burch, complainant, vs. No. 18,421. Eq. Docket 32.

Elia Burch, defendant.

On motion of the plaintiff, by Mr. Eugene F. Arnold, his solicitor, it is ordered that the defendant cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce a vinculo matrimonii on the ground of willful desertion and abandonment for the full and uninterrupted space of two years of complainant by the defendant.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
By M. A. Clancy, Asst. Clerk.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of MARY J. RICKETTS, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of February, 1892.
JOHN W. HARSHA.

6 Campbell Carrington, Proctor.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of MARTHA R. WILSON, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 8th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of February, 1892.
MARTIN L. WELFLEY.

6 Frank T. Browning, Proctor. No. 303 East Cap. St.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of February, 1892.

Alexander Morris, guardian, vs. No. 18,673. Docket Eq. 33.

Morris S. Smith et al.

On motion of the complainant, by Messrs. Jesse H. Wilson and John Ridout, his solicitors, it is ordered that the defendant, MORRIS S. SMITH, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a decree for the sale of lot 60 in the subdivision of square 182 in the city of Washington, District of Columbia, and the re-investment of the proceeds of sale in accordance with the provisions of sections 957 to 968 both inclusive, of the Revised Statutes relating to the District of Columbia.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.

By L. P. Williams, Asst. Clerk.

Legal Notices.**THIRD INSERTION.****This is to Give Notice**

That the subscribers of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters Testamentary on the personal estate of **GEORGE W. GIST**, late of the District of Columbia, deceased.

All persons having claims against the said deceased, are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 2d day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 2d day of February, 1892.

IVORY G. KIMBALL,

MARY S. GIST,

5 **Joseph J. Darlington, Proctor.** 1841 F St.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 1st day of February, 1892.

Henry Hannah, Assignee,

vs.

A. S. Butler, and unknown heirs of George Augustus Butler.

No. 18,612. Equity Docket 33.

On motion of the plaintiff, by Mr. Frank W. Hackett their solicitor, it is ordered that the defendants, the unknown heirs of **GEORGE AUGUSTUS BUTLER**, late of Washington, in this District, deceased, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to sell certain real estate in this District, to wit: a lot in square eighty (80) in the city of Washington, of which the said George Augustus Butler, who recently died in China, died seized, and to pay from the proceeds a claim of the plaintiff, equitably secured on said real estate.

This notice is to be published once a week for three weeks in the Washington Law Reporter and The Evening Star before said day.

By the Court.

A true copy. Test: **A. B. HAGNER, Justice, &c.**

5 **By L. P. Williams, Asst. Clerk.**

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 4th day of February, 1892.

Wm. R. Davis

vs.

Catherine Davis.

No. 18,658. Eq. Docket 33.

On motion of the plaintiff, by Mr. Samuel H. Lewis, his solicitor, it is ordered that the defendant, **CATHERINE DAVIS**, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce a vinculo matrimonii for desertion.

By the Court.

True copy. Test: **A. B. HAGNER, Justice, &c.**

5 **By M. A. Clancy, Asst. Clerk.**

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 4th day of February, 1892.

Charlotte M. Swails

vs.

Stephen A. Swails et al.

No. 18,659. Eq. Docket 33.

On motion of the plaintiff, by Messrs. John H. Smythe, and E. M. Hewlett, her solicitors it is ordered that the defendants, **JOHANNA SWAILS, RACHEL JONES, JOHN W. JONES, HENRIETTA DENNING, CHARLES DENNING, CATHERINE LUSH, and PETER LUSH**, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for the appointment of a trustee with power to convey, part of lot "H" in Sq. 157, in the District of Columbia (the title to which is now in the name of Jessie A. Swails), to Charlotte M. Swails.

By the Court. **A. B. HAGNER, Justice, &c.**

A true copy. Test: **J. R. Young, Clerk, &c.**

5 **By M. A. Clancy, Asst. Clerk.**

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters Testamentary on the personal estate of **FREDERICK W. SCHAPER**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 30th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of January, 1892.

GEORGE SCHEUCH,

5 **Leon Tobriner, Proctor.** 301 Md. Ave., n. e.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business.

January 29th, 1892.

In the matter of the Estate of **SOPHIE OBERHEIM**, late of the District of Columbia, deceased.

Application for the Probate of the last Will and for Letters Testamentary on the Estate of the said deceased, has this day been made by John Oberheim.

All persons interested are hereby notified to appear in this Court on Friday, the 26th day of February, next, at one (1) o'clock P. M., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Washington Post previous to the said day.

By the Court.

A. B. HAGNER, Justice,

Test:

L. P. WRIGHT,

5 **Register of Wills for the District of Columbia.**

No. 4801. Ad. Doc. 17. Chapin Brown, Proctor.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **PAUL BALL**, late of the District of Columbia, deceased; on the 6th day of January, A. D. 1891.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 11th day of August, 1892, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of January, 1892.

ANNA MARIA BALL,

5 **Eugene J. B. O'Neill, Proctor.** 1218 G St. n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters Testamentary on the personal estate of **ELIZABETH P. SMITH**, late of the District of Columbia deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of January, 1892.

MINNIE B. HEARD,

5 **Irwin B. Linton, Proctor.** 1844 Vermont Ave.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business.

January 29th, 1892.

In the case of Thomas E. Wagaman, Administrator, c.t.a. of **LIZZIE MAHON**, deceased, the Administrator c.t.a. aforesaid has, with the approval of the Court, appointed Friday, the 4th day of March, A. D. 1892, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administratrix c.t.a. will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test:

L. P. WRIGHT,

5 **Register of Wills for the District of Columbia.**

No. 4164. Ad. Doc. 18. Irving Williamson, Proctor.

The Washington Law Reporter.

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WASHINGTON, D. C., - - - FEBRUARY 25, 1892

AMONG the many serious objections to the proposed appellate court of three judges, one which ought not to be overlooked is that whenever there happens to be a dissenting opinion by one of the judges of that court we shall have the spectacle presented of two judges declaring that to be law which two other judges (the dissenting judge and the judge of the trial court) declare, in the same case, upon the same facts, and on the same arguments of counsel is not the law. And this, too, very often upon questions which it is to the interest of the community should be settled beyond doubt, for dissenting opinions are rarely delivered when the question before the court is an unimportant one, or one already well settled by previous adjudications. They are usually delivered in the very cases which it is most important to the public interest that they should not be delivered; cases in which the law is unsettled, and in which the public have a right to have it finally and authoritatively declared in such a way that there shall be no lingering doubts remaining to unsettle it in the future. As has often been said, a dissenting opinion is usually an able opinion delivered by an able judge. Hence, when an appellate court consists of only three judges, a dissenting opinion results in rendering the majority decision a practical nullity so far as it can be cited as a precedent thereafter, for it is but the opinion of two judges against the contrary

opinion of two other judges, and the latter, perhaps, the ablest of the four. Thus the law continues uncertain and titles insecure. This state of affairs could not exist with us in the District of Columbia if, instead of this proposed appellate court, the Supreme Court of the District were increased to nine judges, for although the General Term may well sit with no more than three justices to determine the usual run of cases coming before it as a court of review, yet whenever the question is one of importance, or in which one of the members of the court is found dissenting from the majority, it would be an easy matter, with an increased number of judges to draw upon, to have a rehearing before a fuller bench. Even with the court crippled as it has been for years by the lack of a sufficient judicial force to keep up with the current business, it has yet on several comparatively recent occasions deemed it best for the public interest that certain important questions of law should not be left in a state of uncertainty in consequence of the decision being by a divided court, and, therefore, at great inconvenience to itself and the public the court has re-heard such cases before a bench of five justices. Of course this could never be the case with the proposed appellate court. The number of its members could never be increased no matter how important the occasion or how great the necessity. Let us not lose sight of this in considering what advantage is to accrue to us by the proposed disturbance of our judicial system.

But there are even weightier reasons why this project of an appellate court of three judges should be right heavily sat down upon. Those of our readers who desire to know what some of them are should read the article on that subject published elsewhere in this issue.

All kinds of Legal Blanks for sale at the LAW REPORTER Office, 503 E N. W.

The Proposed Appellate Court.**WHY THE BILL TO CREATE IT OUGHT NOT
TO BECOME A LAW.**

It is now nearly thirty years since the "old" Circuit Court of the District was legislated out of existence by the establishment in its place of the Supreme Court of the District of Columbia. The enactment of the statute creating the latter court was, to a large degree, in its effect upon the administration of justice in this community, a revolution. It was the substitution of an entirely new and untried judicial system for one which for sixty years had served the purpose of the people. The passage of the statute organizing the court brought in its train the necessity for the passage of other statutes creating new laws and remoulding old ones so that they should fit the changed conditions. These new laws and amended old ones were not, however, the growth of a day. They were the result of an experience, which grew out of the necessities and teachings of the time. Their enactment was secured as the enactment of all statutes relating to the District of Columbia are secured from Congress—only after long and serious delays, and not until the need of them became all but imperious. Thus during these thirty years has been built up the present judicial system of this District. All of our laws during this period of nearly a third of a century have been enacted with reference to it. A generation of this community has grown up under it. More than two-thirds of the members of our bar have studied their profession with reference to its practice and procedure. And now that this system, has been brought to efficiency after years of ripened experience we are asked to nullify the work of almost a lifetime by substituting for it another experiment in judicial legislation with its accompanying defects to be discovered only in the course of practice and to be cured only by new remedial enactments which like all legislation for this District, is to be secured according to the pleasure of Congress and the perseverance and ability of those willing to undertake the thankless labor of lobbying them through the two Houses. And "all this weary round" we are asked to again undergo because of late years the District has so grown in wealth and population that the judicial force of the court has been insufficient to dispose of the business coming before it. The simple remedy suggesting itself to the average legal mind would be to increase the number of

judges. But somehow or other it would seem that the average legal mind is not equal to the occasion and so a few who are supposed to be, or suppose themselves to be above the average in this respect, have evolved the idea of uprooting much of this tried and perfected system and substituting therefor a so-called "appellate court" to consist of three judges. The only argument we have heard advanced in favor of this novel and dangerous experiment is that the personnel of the court would remain permanent instead of being subjected to the frequent changes which the General Term of present court has been constantly undergoing since its organization, a fault which is not really chargeable to the court but to the lack of judges. If the Supreme Court of the District were increased to nine judges all the advantages, or rather the *only* advantage, which could accrue to the public from a permanent court of appeals could at once be had. The court would then be of sufficient numerical strength to permit that to be done which the justices are quite willing, and indeed desire, should be done, viz., having the three senior justices sit constantly in General Term. Furthermore in case of the sickness or disqualification from any cause of one of the senior justices there need be no blocking of the business of the court as would be the case in a like event with the proposed appellate court, for the next senior justice could be immediately called to the bench for the time being. But by no means the least of the advantages to be had by retaining the present system rather than to rush to some other new and expensive and tentative scheme is yet to be mentioned. The strength of a court of review, when questions of far reaching consequences to the public are to be considered by it, consists in its being constituted of a sufficient number of judges to give weight to its judgment. No court consisting of only three judges can ever have the same respect given to its decision upon an important question which is given to that of a court of five or more. The authoritative value rightfully ascribed to the opinions of the Supreme Court of the United States in all English-speaking countries, and the respect which the profession and our own people give to the court itself, is to be largely attributed to the fact that that court consists of nine judges. The profession knows that whatever there may be of judicial deficiencies in any of the judges in that tribunal are evened up and balanced by the average judgment of the whole court. On the other hand, in courts consisting of a less number, and, *a fortiori* in a court of only three

judges, one man of strong mental endowments and (as is almost always the case with such men) of strong mental bias will frequently so dominate the minds of his few associates that instead of the judgment being that of the entire court it is often really the judgment of one man. Of course with minor questions, which is equivalent to saying in the greater number of cases, coming before a court the influence of such a mind is not so apt to be felt, because the matters to be determined are not of sufficient importance to call for its exercise; but when the question to be considered is of great moment and paramount in its importance because of the consequences which may result to a whole community, then the power of such a man gets in its work and the weakness of the court becomes at once apparent. So that it often happens that at the very time when it is most desirable that the tribunal which is to judicially ascertain and declare the law should be most free from such influences we find it most affected by them. Therefore it is that a court of review, whenever such questions are before it, should consist of such a number of judges that the bias, prejudices, preconceived opinions, or whatever we may call it, of dominating minds, and the idiosyncrasies and short comings of weaker ones, should be balanced by the average of the entire number. It is thus that the product of the judgments of the Supreme Court of the United States, and of the better courts of last resort throughout the States, become better than the product of the judgment of any one member of the court, though he be the ablest of them all. So, too, it is with juries; the product of the united intellects of twelve men is not the average of all the intellects, it exceeds the best of any of them. Whenever, then, any question having great and momentous consequences in its train were brought to the General Term the objection that three judges is too small a number to consider and determine it could be easily obviated (supposing the judicial force of the court to be increased, by having as many of the other judges called to the bench to assist in the judgment as the importance of the question demands. In this way the General Term may be increased to five, seven or even nine justices according as the matter is of more or less gravity; and this, although now impracticable, could easily and frequently be done without detriment to the business of the *nisi prius* courts when the number of those courts are increased by the addition of three justices, as asked for by the bill now before Congress, for then the cal-

endar of each would soon be so well reduced as to justify the occasional holding of a General Term of five or more judges. This ability of our present court, from the nature of its organization to increase or diminish the number of its justices sitting in General Term as the occasion may require it, is an advantage which cannot be too greatly valued. It is needless to say that the contemplated appellate court would have no such facilities and would consequently be at a proportionate disadvantage.

We submit, therefore, that the proposed Appellate Court is a step backward instead of forward. We do not believe any very great number of the members of the bar best fitted to judge of the merits of the bill proposing to establish it are in favor of it. On the contrary, we believe a very large majority of them are opposed to it. The favorable reception so far given to it by the House Judiciary Committee can only be accounted for from the fact that the committee has heard only from one side. A few friends of the bill have impressed their views upon the committee, while its many opponents, either from ignorance of the situation or negligence, have suffered the measure to go by default. But it is not yet too late. The bill which Congress should pass is the bill which proposes to increase the judicial force of the present court. It creates no complications in our District judiciary and calls for no appropriation of money from the United States Treasury. It merely requires that the money now being taken from the people of this District to pluperiorize the pockets of the Recorder of Deeds shall be turned to the benefit of the community which contributes it by giving to the Supreme Court of the District of Columbia three additional justices. This done, all need of any other judicial provision for the District, whether in the way of a little Appellate Court or what not, will cease and the demand therefor will become a back number.—F. H. M.

BANKS—Forged Checks—Laches.—A banking corporation having allowed over three months to elapse before it returned to a depositor a forged check drawn on his account which it had paid, could not defend an action brought for the amount of the check upon the ground that the depositor was estopped by his laches in not giving the bank notice of the forgery immediately upon the return of the check, it having been shown that such notice would not have enabled it to relieve its loss. *Jain v. London and San Francisco Bank*, Supreme Court of California, Dec. 19, 1891 (27 Pac. Rep., 1100).

Supreme Court of the District of Columbia.
IN GENERAL TERM.

BENIAH THORNTON, TRADING UNDER
NAME AND STYLE OF B. THORN-
TON & CO.
v.
CHARLES H. WESER.

1. An affidavit of defense under the seventy-third rule is not insufficient because it does not set forth the facts pertaining to the defense with all the strict particularity required in a special pleading; it is only necessary that such facts shall be stated as reasonably show, fairly construed, that the defendant has a substantial defense to the whole or part of the plaintiff's demand.
2. The statements in the affidavit should not be construed strictly with a view to sustaining a motion for judgment, but rather with liberality, with a view to giving the defendant the benefit of any doubt that may exist in the mind of the court as to whether or not the statement shows a substantial defense.
3. An affidavit of defense to a suit upon a promissory note is sufficient which states that the note was given for goods purchased; that the sale was accompanied with a warranty that the goods were proper and sufficient for the uses for which they were bought; that the plaintiff well knew the uses for which they were bought, and that the goods were greatly inferior to the quality warranted, and were wholly unfit for the use intended. It is not necessary that the defendant should state the exact amount of damages he claims by reason of the unfitness of the goods, if it appear in the affidavit to the satisfaction of the court that he has a substantial defense to some part of plaintiff's demand.

At Law No. 30,808. Decided November 21, 1891.

The CHIEF JUSTICE and Justices Cox and JAMES sitting.

APPEAL from a judgment for want of a sufficient affidavit of defense under the seventy-third rule in an action of assumpsit. *Judgment reversed.*

Messrs. H. W. GARNETT and D. S. MACKALL for plaintiff.

Messrs. RIDDLE & DAVIS for defendant.

CHIEF JUSTICE BINGHAM delivered the opinion of the Court.

The action in this case was upon a promissory note executed by the defendant for the sum of \$388 in ninety days after date. The second count in the declaration, includes the usual common counts. The plaintiff filed a special affidavit under the the seventy-third rule, complying substantially with its terms. The defendant pleaded first, "That he did not promise as alleged," and second, "That he is not indebted as alleged," and filed a special affidavit in support thereof, in which he says, "That he is the defendant in the above entitled cause and he denies the right of the plaintiff to recover the whole or any part of the sum claimed by the plaintiff in his declaration, and the grounds

of his defense, which grounds he says are true in fact, are as follows: "The plaintiffs' sole alleged cause of action against the affiant in the premises is the certain promissory note named in the said declaration, and in the affidavit of said plaintiff accompanying the same; that said note was given in renewal by this affiant of a certain other note given by him to said plaintiff, the consideration whereof was certain goods, wares, and merchandise, to wit, whiskey sold by said plaintiff to the affiant; that said goods, wares, and merchandise were represented and warranted by said plaintiff to the affiant to be of a certain quality, and were bought by the affiant in reliance upon said warrant; and said goods, wares, and merchandise were not of the quality aforesaid, but of an inferior quality and not fit for the use and purpose for which, as the plaintiff well knew at the time of selling the same, the affiant purchased the same; and the affiant further says that at the time of giving the said note in renewal, as aforesaid, he had not discovered the inferiority of said goods, wares, and merchandise to the quality so as aforesaid represented and warranted, and the affiant accordingly says that said note was, and is, by reason of the premises, without consideration, and void."

Thereupon the plaintiff moved for judgment for want of a sufficient affidavit of defense. The court sustained the motion and granted judgment to the plaintiff under the provisions of the seventy-third rule. The simple question presented to us is, whether or not the affidavit of the defendant in support of his pleas presented facts which would constitute such a substantial defense as that he ought to have been allowed to have a trial in the regular way. The rule that has been affirmed repeatedly by this court, with reference to cases arising under the seventy-third rule, is, not that the affidavit of a defendant shall set forth the facts pertaining to his defense with all of the strict particularity that would be required in a special pleading, but that he shall state such facts as reasonably show, fairly construed, that the defendant has a substantial defense to the whole or a part of the plaintiff's demand. And that in construing the statements in the affidavit the court shall not construe them strictly with a view to sustaining a motion for judgment, but rather with liberality, with a view to giving the defendant the benefit of any doubt that may exist in the mind of the court, as to whether or not the statement itself shows a substantial defense; in other words, the doubt is to be construed in favor of the defendant, instead of the

plaintiff, under such circumstances. The affidavit distinctly sets forth that the note was given for the purchase of goods; that the sale of the goods was accompanied with a warranty by the plaintiff as to the quality of the goods, and to the effect that they were proper goods and sufficient for a certain purpose; that this purpose or use which the defendant intended to make of the goods was well known to the plaintiff at the time of the sale, and that the goods were greatly inferior to the warranty; that the fact of this inferiority was well known to the plaintiff; that in fact they were wholly unfit for the use which the defendant purchased them for. Now, it is true that in this affidavit the defendant does not distinctly state, as he would in a special pleading, the exact amount of damage that he claims, except that he says that they are wholly unfit for the use for which he purchased the goods, and that the consideration for which the note was given has wholly failed. We do not think that we ought to require the defendant to state exactly what his damages may be, if it appears in the affidavit itself to our satisfaction, that he has set forth such facts, as, if proved, would establish a substantial defense to some part of the plaintiff's cause of action. We think it would be a very rigid construction to hold that the damages proven, if the facts be as stated, might be of such insignificant amount as to render the defense a scheme for delay; yet that would be the only condition on which the court would be authorized to sustain the motion for judgment. We think that the facts stated in the defendant's affidavit indicate a substantial defense for a substantial proportion of the plaintiff's cause of action, and that the pleas are sufficient to raise an issue as between the plaintiff and defendant, that ought to have been determined by a regular trial of the case.

We are, therefore, constrained to reverse the judgment of the court below, and *remand the cause for further proceedings.*

Waste—By Tenant in Common—Mining.

The extraction of ore from a mine, and the cutting of timber on the claim to be used in the operation, by a tenant in common, is not waste. It may be urged, that as between lessor and lessee for years, their contract contemplates the extraction of mineral, and in case of a life-estate the grantor or donor must intend that his grantee or donee shall receive some benefit from his estate. But is it not also true, from the very nature of mining property in this State,

valuable only because of the mineral it is supposed to contain, that each of the co-tenants may use it in the only way it can be used? The co-tenants out of possession may at any time enter into an equal enjoyment of their possession; their neglect to do so may be regarded as an assent to the sole occupation of the other. This is but another application of the principle announced in *Pico v. Columbet*, 12 Cal., 414. True, the co-tenant will not be held to assent to the commission of waste by the sole occupant, but the question returns, what acts done by him are waste? It cannot be doubted that on the part of a mere trespasser it is a wrong in the nature of waste to remove any ore from a mine. The cases cited by appellants fully sustain this proposition. But it is not a just inference that, as between tenants in common, the rule is the same. Section 732 of the Code of Civil Procedure does not relate to trespasses committed by those who have no interest in the property; nor does it define "waste," or declare what acts committed by a guardian, tenant for life or years, or joint tenant, or tenant in common, as the case may be, shall be waste. For the appropriate meaning of the word, as applicable to acts done by these several classes of persons, we are relegated to the principles of the common law, and to various considerations of policy arising out of different conditions which the common law recognizes and approves.

The word "waste" is not an arbitrary term, to be applied inflexibly without regard to the quantity or quality of the estate, the nature and species of the property, or the relation to it of the person charged to have committed the wrong. As was said by Roane, J., in *Findlay v. Smith*, 6 Munf., 134: "In considering what is waste in this country it is to be remarked that the common law by which it is regulated adopts itself in this, as in other cases, to the varied situations and circumstances of the country. * * * The law on this subject must be applied with reasonable regard to circumstances." In the mining regions of this State, where title to a lode can be acquired from a United States Government only after work of certain value has been done upon it, can it be that if one of several locators or owners shall assume the sole risk of developing the mine, he shall become liable to those who have taken no chance of possible loss, not only for an accounting as to net profits—supposing him to be fortunate enough to secure any—but also as a tort feisor, for three times the value of the whole, or for a proportionate share of the ore

taken out? The theory of plaintiffs is that defendant could not extract ore from the mine without committing waste, because such extraction is a destruction of the very substance of the estate—an irreparable injury to the inheritance. In view of the character of the property, and of plaintiffs' implied assent to its sole occupation by defendant for mining purposes, we regard the right of the latter to the proceeds of its operations as partaking of the nature of a usufruct; the appropriation of the net returns as a legitimate participation of the profits; and its acts of mining as not impairing or consuming the estate to any greater extent than must be presumed to have been intended to be allowable by each of the parties in interest. *Murray v. Haverty*, 70 Ill., 320, supposing it to have been correctly decided, does not entirely sustain the view of counsel for appellants. That decision was based upon a statute which authorized a tenant to bring trespass or trover against this co-tenant who should "take away, destroy, lessen in value or otherwise injure" the common property. The section of our Code does not declare that a co-tenant who "shall take away," etc., shall be guilty of waste.

The question waste or no waste is left to the courts. Besides, in *Murray v. Haverty*, the court had already decided the case by holding certain evidence as to license inadmissible under the defendant's plea. Counsel quote from Freeman on Co-Tenancy: "In all cases where a co-tenant practically destroys the estate, or some part thereof, trespass may be sustained by the injured co-tenant." Section 302. But this is to be taken with other portions of the same work where the distinction is pointed out between an appropriation of the proceeds, rents, profits or income, and the destruction of the estate itself. See also *Wat. Tresp.*, 947. The tenant in common of a mine may occupy it for the purpose contemplated by all, even though a portion of the soil or ore be removed. Each tenant has the right to use the mine, and as was intimated by the Supreme Court of Pennsylvania, so long as an estate is used according to its nature, "it is no valid objection that the use is consumption, and it is no fault of the tenant that it is not more durable." *Irwin v. Covode*, 24 Penn. St., 162. The taking of ore from the mine is rather the use than the destruction of the estate within the meaning of the general rule. The results of the tenant's labor and capital are in the nature of proceeds or profits, the partial exhaustion being but the incidental consequence of the use. It is not necessary to examine in detail the many cases cited by appellants, as in

none are the facts like those of the case at bar. We shall refer to a few of them. *Delaney v. Root*, 99 Mass., 546, was an action of trover for the conversion of personal property. *Stetson v. Day*, 51 Me., 434, simply decides that under a statute of Maine a tenant for life, who neglected to pay taxes assessed upon the estate during his tenancy, and thereby subjected the estate to a sale, was liable to an action by the reversioner, either of waste, or of case in the nature of waste. *Maddox v. Goddard*, 15 Me., 219, and *Symonds v. Harris*, 51 id., 14, were actions of trespass *quare clausum* for the destruction of a mill, and for the dismemberment and removal of machinery from a mill. *Blanchard v. Baker*, 8 Me., 253, trespass on the case for a similar injury to common property; *McDonald v. Trafton*, 15 id., 225, has no bearing upon any question involved in the case before us, and *Hubbard v. Hubbard*, id., 198, was a statutory action of trespass "for strip and waste" of timber.

As to the destruction of trees charged in the complaint herein, it has been expressly decided in California, that in the enjoyment of his legal rights in the common property, each co-tenant may cut timber and use and dispose of it, at least to an extent corresponding to his share of the estate. *Hihn v. Peck*, 18 Cal., 640. In the case before us there is neither averment nor finding that defendant has cut or consumed more than its share. Besides, the use of the trees was merely incidental to the mining operations of defendant. In Pennsylvania it is held that the cutting of timber, to be used in a mine by the tenant for life, whose mining is not waste, is not itself waste. *Neel v. Neel*, 19 Penn. St., 328. Nowhere is it held to be waste for a tenant in common of a farm to cut wood necessary to the use of the farm. It was indeed held in New York by the Supreme Court that the cutting down of timber trees by one of several co-tenants upon land whose principal value consisted of the growing timber, was waste, for which the other co-tenants could recover damages under a clause of the Revised Statutes of that State. *Elwell v. Burnside*, 44 Barb., 447. But aside from the rule to the contrary laid down in *Hihn v. Peck*, 18 Cal., 640, plaintiffs have no averment that the quicksilver mine is "principally valuable" because of the trees growing from its surface. And here it may be added, applying the rule of *Hihn v. Peck*, it would seem each tenant in common of a mine is at least entitled to take out his share of the ore. That neither of the tenants can "look into the ground" may be a reason why a court of equity should order an account to be taken, but ought not to operate

a prohibition upon the working of the mine by anybody. Sup. Ct. Cal., Aug. 31, 1883. McCord v. Oakland Quicksilver Mining Co. Opinion by McKinstry, J.

Telephone Companies—Duty to Furnish Service.

The respondent, a telephone company, maintaining the only telephone exchange in a city which was connected with telephones in the places of business and residences of its subscribers, refused on demand to furnish telephone instruments to relator, a telegraph company, which was operating a telegraph line within the same territory, as part of a large system, except on condition that the instruments should not be used as an adjunct to the receiving and transmitting of telegraphic messages, although respondent had furnished such telephonic facilities to another telegraph company, a competitor with relator in the same city, without such condition. Held, that respondent was a common carrier, offering to the public the use of its telephonic system for the rapid conveyance of oral messages, and as such was subject to the duty of serving all persons alike, impartially and without unreasonable discrimination, and that the right to equal facilities for the use of such public system extended to telegraph companies as well as to individuals. In Hockett v. State, 105 Ind., 250, the Supreme Court of Indiana upheld a statute of that State limiting the rent to be charged for the use of a telephone to a sum not exceeding \$3 per month. The court decided that a telephone company was a common carrier, in the same sense as a telegraph company, its instruments and appliances being devoted to a public use, so that the Legislature of a State could prescribe the maximum charges for its services. This case was approved and followed by the same court in Telephone Co. v. Bradbury, 106 Ind., 1, in which the same questions were discussed by able and distinguished counsel, and fully considered by the court. See also State v. Telephone Co., 17 Neb., 128, and Telephone Co. v. Falley, 118 Ind., 194. The authorities last cited had reference to the right of individuals to the use of the telephone as a public system, which was open to all persons, but the courts of this country, with perhaps a single exception, have extended the same right to telegraph companies, in every case in which the defenses now set up by the respondent were made and overruled.

In State v. Bell Tel. Co., 23 Fed. Rep., 539 (1885), in the United States Circuit Court for the

Eastern District of Missouri, the question was "whether the court could compel the defendant, managing the telephonic business in the city of St. Louis, to establish communication with any other individual or company than that permitted by its license from the patentee," and Circuit Judge Brewer, in answering the question, said: "A telephone system is simply a system for the transmission of intelligence and news. It is perhaps, in a limited sense, and yet in a strict sense, a common carrier. * * * The moment it establishes a telephonic system here it is bound to deal equally with all citizens in every department of business, and the moment it opened its telephonic system to one telegraph company, that moment it put itself in a position where it was bound to open its system to any other telegraph company tendering equal pay for equal service." In Bell Tel. Co. v. Com., 3 Atl. Rep., 825, the Supreme Court of Pennsylvania, adopting the able opinion of Judge Arnold in the court below, decided that the telephone company was a common carrier. A like decision was rendered in Chesapeake & Potomac Tel. Co. v. Baltimore & O. Tel. Co., 66 Md., 399, and in Commercial Union Tel. Co. v. New England Telephone & Teleg. Co. (Vt.), 17 Atl. Rep., 1071. Being a common carrier, the telephone company has not the right to discriminate in granting licenses for the use of the telephone instruments. It has already been noticed that the Western Union Telegraph Company is not the owner of any of the telephone patents, but only a licensee. Whatever claims that company had in the patents were transferred by it to the National Bell Telephone Company under the contract of November 10, which provided that thereafter the telegraph company should have the exclusive use of the telephone for purposes of telegraphy. But the enforcement of this part of the contract would violate the rule, that when the use of a patented device is thrown open to the public, or to classes of the public, all are entitled to use it on the same terms as others in the same class, and therefore any contract or agreement which would effectually evade the rule must be declared void as being against public policy, both at common law and by statute. The authorities referred to by the counsel for the respondent to support their theory, that a patentee can control the use of his patent, are specially applicable to patents and patented articles designed for private use.

In the Vermont case, supra, (17 Atl. Rep., 1071), the distinction between the law governing the private use of a patent and the law governing its public use is briefly but clearly stated,

and it was there said : "Patents are property and the right to sell or lease them is subject to the same restrictions as other property. The patentee cannot lease them for any use that contravenes principles of public policy. If he leases them for a public rather than an individual use, he thereby gives the use to the whole public. In this case the American Bell Telephone Company might have licensed its patent to the defendant so the latter alone could have used it, but when it went beyond this, and licensed the defendant to use it for the public, it in fact licensed it for all who desired its use and offered compliance with reasonable conditions." That decision was rendered in 1889, and is the most recent one of the adjudications on the questions now under discussion which have been brought to our notice. The decisions of the courts in Pennsylvania, Maryland and Indiana were made with reference to the statutes of those States which had been enacted for the regulation of telephone companies, limiting charges and prohibiting discriminations, but there is a concurrence of opinion in the conclusion that those companies are subject to the common law rules which pertain to all common carriers. In Nebraska and Vermont, in the absence of any general statutes on the subject, the courts have held the same doctrine. The respondent is a common carrier which has offered to the public the use of a telephonic system for the rapid conveyance of oral messages from one point to another ; that one of the most important duties of a common carrier is that it shall serve all persons alike, impartially and without unreasonable discrimination, and that the performance of this duty cannot be avoided by a special contract made between the respondent or its licensor and one or more persons for the exclusive use of the system, such contract being void as against public policy, and that a patented device or devices, when employed for a public use, or by a common carrier in the prosecution of its business, will be subjected to the rules and regulations which govern unpatented property under the same circumstances. U. S. Circ. Ct., D. Del., July, 1891. State, ex rel. Postal Telegraph Cable Co. v. Delaware & A. Telegraph & Telephone Co. Opinion by Wales, J. 47 Fed. Rep., 633.

COMMON CARRIER—Recovery of Damages for Negligence.—Damages may be recovered by a widow for mental suffering resulting from the negligence of a railroad company in failing to carry promptly the corpse of her husband. Hale v. Bonner, Supreme Court of Texas, Oct 30, 1891, 17 S. W. Rep., 605.

Supreme Court of New York.
GENERAL TERM—FIRST DEPARTMENT.

THE MADISON SQUARE BANK,
RESPONDENT,

v.
WARHAM N. PIERCE,
APPELLANT.

Decided November, 1891.

PAYMENT BY INDORSER NO DEFENSE TO
MAKER.

APPEAL from a judgment recovered at the circuit on trial before the court.

Mr. JUSTICE DANIELS delivered the opinion of the court :

The judgment which has been recovered is for the full amount of a promissory note made by the defendant to the order of himself for the sum of \$1,000, payable at the Madison Square Bank in six months from the 23d day of January, 1889. This note was indorsed by him and transferred to the L. M. Bates Company, which company, before the maturity of the note and for value, indorsed and delivered it to the plaintiff. After that the L. M. Bates Company became insolvent, and a receiver of its property and effects was appointed and duly qualified, and took possession of all the assets of the company. The note, together with other claims, was presented to the receiver, and, under orders made by the court, he paid to the plaintiff 73½ per cent. of the amount due upon the note. And that payment was relied upon by the defendant as a defense to the extent to which it had been made. But this defense was overruled, and the amount of the note was held to be recoverable by the plaintiff.

Whether this was a correct application of the law to the facts of this case upon principle, certainly admits of some doubt; for, by the payments which the receiver made, a right of action vested in him to recover from the maker of the note this sum of 73½ per cent. It was a right of action entirely independent of the plaintiff, and capable of being enforced by him against the defendant. And this view was adopted and followed by early cases decided by the English courts. Bacon v. Searles 1 Henry Black, 88; Hemming v. Brook, 1 Carr & Marshman, 57; Piereson v. Dunlop, 2 Cowp., 571, and Wolwyn v. St. Quintin, 1 Bos. & Pul., 652, which, however, is not a decisive authority in support of this position. These cases, and the others bearing upon

the same point, were fully considered in *Broadhurst v. Jones* (9 Manning, G & S., 173); and the conclusion was there maintained, in view of all the preceding decisions, that a defense of this nature was not available to the maker of a note or the acceptor of a bill of exchange; but that, notwithstanding the payment, the holder of the paper was still entitled to proceed against the principal debtor and recover the full amount for which the obligation had been created. And as a result of that recovery, the plaintiff would hold the excess, beyond that due upon the paper, as a trustee for the benefit of the indorser by whom the payment had been made. The principle is somewhat arbitrary, it is true, but it was considered to be the fair result of the authorities applicable to this subject. And it was not disaffirmed in *Thornton v. Maynard* (10 L. R. C. P., 695). The circumstances in that case were peculiar, and the court there held the plea to be good as an equitable defense on account of the equities which had vested in the defendant. In *Goodwin v. Cremer* (16 Eng. Law and Eq., 90) the same principle is applied. But in that case the question was disposed of more as a matter of pleading than otherwise.

And it was followed in *Camp v. Balls* (20 Eng. Law and Eq., 498), where, however, the suggestion was made in the course of the discussion that the amount paid might be proved by way of mitigation of damages. And this it was also held might have been proved in *Wattles v. Laird* (9 John., 326). But that was in favor of a surety in an action upon a bond given on the arrest of the debtor, and for that reason it has no special application to this controversy. And *Agra, &c., Bank v. Laighton* (L. R., 2 Exchequer, 56), so far as it extends, is in the same direction. And a quite similar view of the law was expressed in *President, &c., v. Hazard* (13 John., 352). The existence of this legal principle followed at the trial has also been assumed in 2 Parsons on Notes, &c., 218, where the author has collected the cases bearing upon it in a note to the statement of it. And a like conclusion of the law has been stated in 2 Daniels Neg. Ins., Sec. 1237. And the authority, although not without conflict, appears now to be sufficient to entitle the holder of commercial paper to collect the entire amount against the principal debtor, although a part payment may have previously been made by an indorser to the holder. And this right is not inconsistent with section 449 of the Code of Civil Procedure, requiring every action to be prosecuted in the name of the real party in interest. For the exception to that requirement has been made that a trustee of

an express trust may sue without joining the person for whose benefit the action is prosecuted. And a person with whom or in whose name a contract is made for the benefit of another, is a trustee of an express trust within the meaning of this section, and that appears to include this obligation. For the contract of the defendant held by, and under the circumstances made with the plaintiff, was not only for its own benefit, but also for the benefit of the indorser by whose indorsement the paper was transferred to the plaintiff. The judgment in the action, therefore, appears to be sustained by the law, and it should be affirmed.

VAN BRUNT, P. J., concurs.

BARRETT, J. (concurring)—I concur in the conclusion arrived at by Mr. Justice Daniels. The precise question to be here determined depends for its solution in the first instance upon the effect of the defendant's answer. Under this answer, the equities, as between the plaintiff and the indorsers, are not in the case. We have simply to decide, therefore, whether a part of the note has been paid to the plaintiff by the defendant or on his behalf. Nothing of the kind is set up in the answer. The defendant says that the plaintiff has received seventy-three and one-fourth per cent. of the note and that there is only due it on account of said note twenty-six and three-fourths per cent. thereof. But he does not aver that this percentage was received from him or from someone who paid it on his account. The averment therefore is not a plea of payment pro tanto, and it is irrelevant to say that the plaintiff has received a part of the note without adding that it was so received from the defendant or from someone who made the payment on his behalf. The answer was demurrable and no other judgment could have been rendered upon such a plea than that which was rendered. But even if the matter set forth in the agreed statement of facts had been pleaded, the defendant's case would not have been helped. For it thereby appears that the payments made by the receiver of the indorsers were made, not by or on behalf of the defendant but on account of their independent contract. The payments were so made not because the maker was liable therefor, but because the indorsers were themselves liable therefor. Such payments were not upon account of the maker's primary obligation, nor can the maker take advantage of such payments to relieve himself from his distinct contract obligation to the holder. It is true that the indorsers upon payment under their contract have a right of action over against the maker. And it may be asked, how then can the holder

have a right of action against the maker for the full amount of the note? And how can the holder, under any circumstances, be allowed to recover from any one more than the amount of his note? There need be no inconvenience in these particulars, and the logic of the legal situation may be preserved without subjecting the maker to payment twice or permitting the holder to receive more than his due or frustrating the indorser's action over. In the first place, payment to the holder by the maker fully extinguishes the latter's obligation.

In the nature of things this must be so, and that, too, although the indorser may have previously paid a part of the amount due. If the indorser has paid such part and is unwilling to permit the holder to collect from the maker the part so paid as well as the remainder, he has his direct action against the maker and the latter can interplead the holder and bring the whole amount of the note into court for equitable division. Whether the maker be sued by the holder or by the indorser, he can interplead the other party and bring the whole amount of the note into court, thus at one and the same time satisfying the holder for the whole amount due on the note and the indorser for the amount paid thereon by him. The right of the holder to sue for the whole amount of the note is not affected by the rule of the Code which requires all actions to be brought in the name of the real party in interest. The holder is not a trustee for the indorser when, after part payment by the latter, he proceeds against the maker for the whole amount of the note. It is true, that after he has collected the whole amount, the law implies a trust obligation to repay to the indorser the amount of his previous payment. In that sense, he holds part of the money collected as trustee for the indorser. But as between the holder, as plaintiff in the action, and the maker as defendant, the action is not brought by a trustee but by the owner of the paper. And as such owner he is the real party in interest.

Any other view of this relation overlooks the true nature of the original contract and the obligations which the maker and indorser respectively assume. Besides, it has been repeatedly held that he who holds the legal title to the instrument is the real party in interest, and that the defendant has no right to show the equities under which the transfer was made, or otherwise to prove that the recovery would be for the benefit of some one other than the plaintiff in whom the legal title is vested. I agree, therefore, with Baron Cresswell, in *Broadhurst v. Jones*, cited by Mr. Justice Daniels, that

"the only question in which he (the defendant) has any interest is whether the party seeking to enforce payment by him is the legal owner of the bill, and whether recovery by and payment to such party will enure as a satisfaction and absolute discharge of his liability upon the bill." Baron Cresswell demonstrates the latter proposition with convincing logic, and certainly the defendant here, who has not paid the indorsers, nor offered to pay them, nor even pleaded liability to pay them, cannot escape his contract obligation upon a mere suggestion *aliunde* his answer that perhaps the indorsers may prefer to hold him directly rather than look to the plaintiff as their trustee.

Thus the defendant, without offering to pay any one, insists that he should be relieved from a part of his contract obligation. His case does not differ from that of the defendant in *Broadhurst v. Jones*, *supra*, and his situation is well described in the opinion in that case as follows: "The plaintiffs stand upon the record the legal owners of the bill and the defendant as having failed to perform his contract without any legal excuse for the breach. The defendant was the party primarily liable, and by his plea he sets up, by way of discharge, satisfaction by one not in privity with him in relation to such satisfaction, and which we think did not enure to his discharge."

I may add to the list of authorities cited by Mr. Justice Daniels, *Thornton v. Maynard* (10 Common Pleas L. R., 698), where Lord Coleridge, speaking of *Jones v. Broadhurst*, said that "the judgment of Cresswell, J., in that case reviews the authorities, and finally decides that payment either partially or in full by the drawer to the indorsee does not disentitle the indorsee to sue the acceptor for the full amount of the bill."

He also cites *Byles on Bills* (10th ed., 210), where Sir John Byles says: "To an action against the acceptor, payment by the drawer is no plea, but only converts the holder into a trustee for the drawer *when the holder afterwards recovers from the acceptor.*"

By the payment of this judgment the defendant will have paid the note and extinguished his entire obligation thereon. And the indorsers will no longer have any right of action over against him, but will have to look to the plaintiff for the amount already paid on account of their obligation. We must not speculate as to why the receiver of the indorsers had not already sued the defendant, nor why he has suffered the plaintiff to proceed as the owner of the note for the recovery of the whole amount thereof from the maker. Such speculations

would be unprofitable and would only tend to confuse the real question, namely, whether the payment by the indorser under his contract of indorsement is a payment by or on behalf of the maker operating *pro tanto* to extinguish the maker's obligation. Upon both principle and authority we think such payment is in extinguishment of the indorser's liability and of that alone, and that it is not a payment for or on behalf of the maker. We think, too, that the single payment by the maker to the holder of the entire sum due and payable by his contract, inures as a satisfaction and absolute discharge of his liability upon the note.

I agree that the judgment should be affirmed, with costs.

Contract—Agreement to Arbitrate—Right to Sue.

The Supreme Court of Appeals of West Virginia, in *Kinney v. Balt. & O. Employees' Relief Assn.*, 14 S. E. Rep. 8, hold that a provision in a contract that all differences arising under it shall be submitted to arbitrators, thereafter to be chosen, will not prevent a party from maintaining a suit in the first instance, in a court to enforce his rights under it. Branon, J., says:

The first point of objection made by the appellant to the decree is that the plaintiff could not sue because of article 25 of the constitution of the association, which reads thus: "Should any difference arise between any claimant for the benefits herein set forth and the committee of management, it shall be submitted to three arbitrators, one to be chosen by each party, and the third by the two thus chosen, whose decision shall be final." Does this article forbid Mrs. Kinney from resorting to a court of justice to enforce her demand, and limit her to arbitration? The common-law doctrine is thus laid down in 2 Tuck. Comm. Laws, 31: "Though parties, on entering into a contract, agree that if a difference should arise between them, they will refer it to arbitrators, yet a bill for specific performance of such agreement will not lie, (*Street v. Rigby*, 6 Ves., 818; *Gourlay v. Duke of Somerset*, 19 Ves., 431); and it seems an action at law will not lie for refusal to nominate an arbitrator in pursuance of a covenant to refer. *Browning v. Wright*, 2 Bos. & P. 13. Nor is an agreement to refer a bar to a suit or action, though, if the party sues contrary to his bond of submission, he is liable to an action for damages. *Mitchell v. Harris*, 5 Ves. Jr., 132. Nor can a party, by an agreement to refer, deprive himself

of right to apply to a court of equity. *Nichols v. Challe*, 14 Ves., 271. Indeed, a mere agreement to refer, without an actual consequent reference, is no bar to an action in any case." 2 Pars. Cont., 707, states: "Both in this country and in England it has long been considered that the parties to a contract are not bound by an agreement, whether in or out of the contract, to refer questions under the same to arbitration; because they cannot oust the courts of their jurisdiction by any agreement that these claims shall be submitted to arbitration." Same doctrine in *Morse, Arb.*, 91. Many American cases are cited for this proposition.

It will be seen in *Condon v. Railroad Co.*, 14 Grat., 314, that Judge Moncure, and in *Scott v. Avery*, 36 Eng. Law & Eq. 1, that Coleridge, J., criticise the doctrine as standing on no solid reason, but says it is law too long settled to be disturbed. In the case of *Condon v. Railroad Co.*, the Virginia court, following the English case, feeling the unreasonableness of the rule, as I myself do, drew a distinction, which, however clear in words, is not in principle; as Judge Moncure admits that parties may by contract lawfully make the decision of arbitrators, or of any third person, a condition to a right of action. and that such decision is a part of the cause of action; and until such decision is made the courts have no jurisdiction, and therefore cannot be said to be ousted of their jurisdiction, and they can only be said to be so ousted when an independent cause of action does or will exist which itself is referred to arbitration; and the Virginia court held that where a contract provided that work in construction of a railroad should be inspected and received by the engineer, and the amount of the work and all disputes touching the same should be determined by him, and his decision should be final, without further appeal, the contract was obligatory. But both the Virginia and English courts say that such a contract as this under said article 25 does not prevent suit in a court.

TAXATION—Stock in Unincorporated Foreign Express Companies.—The stock of a foreign express company, which is in the nature of a partnership, not being incorporated, but whose stock is divided into shares which are transferable, liable to assessment, and considered as stock by the commercial world, is taxable under a statute which includes all stocks except those issued by the United States. *Lockwood v. Town of Weston*, Supreme Court of Errors of Connecticut, Nov. 4, 1891, 23 Atl. Rep., 9.

JURY'S DUTY IN CRIMINAL CASES.—The case of *Com. v. McManus*, recently decided by the Supreme Court of Pennsylvania (21 Atl. Rep., 1108, and 22 Atl. Rep., 761), contains an interesting discussion of the proposition that the jury are judges both of law and fact in criminal cases. The case came up on exception to a ruling of the trial judge, refusing to direct the jury that they were the judges of law and fact. On this point the judge ruled that the jury were bound to decide the case on the law and the evidence; that the court's statement of law was the best evidence of the law which the jury had, and therefore in view of that evidence, and viewing it as evidence only, the jury must be guided by what the court said was the law. This ruling was affirmed by the Supreme Court, Paxson, C. J., saying that the charge of the court was the best evidence of the law within the jury's reach, and therefore the jury were bound to follow it. Mitchell, J., in his opinion, denies emphatically that the jury are the judges of law as well as of fact. He says that the doctrine arose from the power of the jury to give general verdicts, which, if in favor of acquittal, could not be revised by the court. But to prove the doctrine true, a court should have no power of revision when the verdict was against the prisoner. This right of revision by the court has never been disputed, and conclusively negatives the jury's right to be judges of the law.

It would seem that Mitchell, J.'s, view is correct and his reasoning conclusive. There is always danger, as was pointed out by the court of Georgia in *Higginbotham v. Campbell*, 11 S. E. Rep., 1027, that if the jury are told that they are judges of law as well as of fact, they may think themselves not bound to accept the court's statement of law any more than they are bound to believe a witness to a fact.—*The Harvard Law Review.*

NOTE—Release of Surety on.—In a suit upon a promissory note the surety claimed a discharge on the ground that the maker had paid \$100 on account in consideration of extension of the time of payment, the surety's original obligation being thereby altered: *Held*, That as it requires an additional valuable consideration beyond part payment of the debt, to bind the promisee to the observance of even an express promise to indulge, the original obligation was not altered, as the holder could have brought suit at any time after the note had matured, and the surety was therefore not discharged. *Hughes et al. v. Southern Warehouse Co.*, Supreme Court of Alabama, Nov. 5, 1891 (10 So. Rep., 183).

THE COURTS.

Supreme Court of the District of Columbia.

IN EQUITY—New Suits.

February 10, 1892.

13706. *Augustus J. A. Lohse v. Jennie Lohse*. Com. sol., G. W. Albright.

13707. *W. S. Cox v. Eliza W. Patterson et al.* To Change trustee. Com. sol., p. p.

February 3.

13708. *Frank J. Litz v. Ella G. Litz.* For divorce. Com. sol., Geo. W. Kern.

13709. *William Mayse v. Margaret Gaddis et vir.* To annul deed. Com. sols., F. H. Mackey and Jas. F. Hood.

13710. *Wm. Mayse v. Chas. J. Meister.* To annul deed. Com. sols., F. H. Mackey and Jas. F. Hood.

13711. *W. A. Stuart v. D. Hardy et al.* To sell interest in realty. Com. sol., Jas. H. Smith.

February 15.

13712. *Annie Cadle v. Richard Cadle.* For divorce. Com. sol., A. K. Browne.

13713. *O. N. Baily et al. (firm of R. Leitch & Son) v. Jno. Fegan.* To enforce mechanics' lien on lot 9, sq. 496. Com. sol., Jno. Ridout.

February 16.

13714. *Frank Libbey et al. (firm of Libbey, Bittinger & Miller and firm of Kane & Roach) v. Benjamin Frank et al.* Com. sol., M. J. Colbert and J. C. P. Greer.

February 17.

13715. *J. H. Williams v. Minnie E. Williams.* For divorce. Com. sol., C. Carrington.

13716. *Frederica P. Bruehl v. Emil G. Bruehl et al.* To declare ownership of lot "I" Shepherds sub. of pt. of "Girl's Portion." Com. sol., J. Edgar Smith.

13717. *C. F. Miller v. Chas. Mades et al.* For specific performance. Com. sol., Jno. M. Lawton.

13718. *A. Depue et al. v. Jno. H. Bridwell et al.* General and creditor's bill. Com. sols., Edwards & Barnard.

AT LAW—New Suits.

February 1, 1892.

32572. *Weller & Repetti v. William H. Wright.* Note, \$240. Pliffs. atty., Jas. F. Hood.

32573. *Weller & Repetti v. W. R. Stone.* Note, \$113.60. Pliffs. atty., Jas. F. Hood.

32574. *B. B. Earnshaw & Bro. v. G. F. Shepherd.* Account, \$963.44. Pliffs. atty., F. T. Browning.

32775. *Frank J. Dieudonne v. Simon D. Newcomb.* Note, \$150. Pliffs. Atty., Frank T. Browning.

32576. *Henry Kneffley v. Ferdinand Bitter.* Judgment of Justice Walter. Pliffs. atty., E. L. Schmidt.

32577. *Felix M. Draney v. The District of Columbia.* Account, \$3,206.09. Pliffs. attys., Shelabarger & Wilson.

32578. Carvalaho & Herboth v. J. K. Strasburger. Account, \$179.25. Plffs. attys., H. W. Garnett and D. S. Mackall.

February 2.

32579. Catherine La Covey v. Chas. Gessford, garnishee of H. A. Barron. Appeal. Appellee's atty., E. A. Newman; appellants atty., J. A. Johnson.

32580. Jno. R. Francis v. Jno. E. Risley. Account, \$779.63. Plffs. atty., D. W. Glassie.

February 3.

32581. Robert Moore & Co., to the use of Carl Victor, trustee, v. William J. Moodie, Amos L. Merriman, Benj. J. Kendig, and Harry Landvoigt, trading as Kendig & Landvoigt. Note, \$130. Plffs. atty., W. A. Johnston.

32582. Emerson W. Bliss, Jr., et al., v. Horace M. Cake. Certiorari. Defts. attys., Worthington & Heald.

32583. A. Richards & Co. v. Jno. A. Roche. Account, \$735.87. Plffs. atty., L. C. Williamson.

32584. A. Richards & Co. v. P. H. McLaughlin & Co. Account, \$101.90. Plffs. atty., L. C. Williamson.

32585. Nicholas Sharp v. Timothy Gannon. Damages, \$5,000. Plffs. attys., Webb & Webb.

February 4.

32586. F. J. McLane, admr. of William Ghio, deceased, vs. The W. & G. R. R. Co. Damages, \$10,000. Plffs. attys., T. A. Lambert and W. H. Sholes.

February 5.

32587. F. M. Baker v. Sidney Travers. Account, \$121.25. Plffs. atty., J. J. Wilmeth.

32588. Charles Wilton v. John F. Lippard. Note, \$1,980.16. Plffs. atty., W. S. Jackson.

32589. M. Fisher Sons & Co. v. J. W. Parrish et al. Note, \$500. Plffs. attys., H. W. Garnett and D. S. Mackall.

32590. The Goodyear Rubber Co. v. Edward Corbett. Account, \$153. Plffs. attys., H. W. Garnett and D. S. Mackall.

32591. V. Henry Rothschild & Co. v. B. J. Behrend. Account, \$1,263.18. Plffs. attys., H. W. Garnett and D. S. Mackall.

32592. Whitfield McKinley v. Wm. L. Pollard. Judgment of Justice Strider, \$84.82.

32593. O. M. Bryant v. T. W. Widdicombe. Judgment of Justice Strider, \$40.

February 6.

32594. John H. Carrico v. E. A. Waters. Account, \$386.00. Plffs. atty., R. Ford Cowles.

32595. John A. Griffith & Co. v. Mertz & Co. Account, \$769.85. Plffs. atty., D. W. Glassie.

32596. I. S. Lyon v. Frank Aldrich et al. Note, \$300. Plffs. atty., p. p.

February 8.

32597. The C. H. Brown Banking Co., v. David Rittenhouse. Notes, \$561.95. Plffs. attys., Abert & Warren.

32598. S. Bieber v. S. Travers. Note, \$125. Plffs. atty., I. W. Nordlinger.

32599. C. S. Garratt v. Easterday & Haldeman. Account, \$300. Plffs. atty., John Ridout.

Legal Notices.

Rule of Court.

RULE 20. * * * * Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be especially ordered or which may be selected by the parties.

FIRST INSERTION.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of ROBERT C. BERNAYS, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 9th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of February, 1892.

ELIZABETH BERNAYS.

8 Isaac M. Nordlinger, Proctor. 500 7th St. s. e.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters Testamentary on the personal estate of CARL L. WINDHOLZ, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of February, 1892.

WM. A. RUESS,

606 P St. n. w.

This is to Give Notice

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of JOHN MILLER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscribers, on or before the 20th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 20th day of February, 1892.

CATHARINA MILLER,

8 Carusi & Miller, Proctors. JOSEPH BISCHOF,

311 Q St. n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, Holding a Special Term for Orphans' Court Business.

February 19th, 1892.

In the matter of the Estate of CAROLINE C. ACKER, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Walter H. Acker.

All persons interested are hereby notified to appear in this Court on Friday, the 18th day of March, next, at one o'clock P. M., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: L. P. WRIGHT, Register of Wills for the District of Columbia.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration c.t.a. on the personal estate of SAMUEL C. POMEROY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under its hand this 12th day of February, 1892.

AMERICAN SECURITY AND TRUST CO.

8 Edward A. Bowers, Proctor. Percy B. Metzger, Trust Officer.

Legal Notices.**SECOND INSERTION.****This is to Give Notice**

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters Testamentary on the personal estate of **ELIZABETH R. DYER**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day of February, 1892.

JAS. L. TAYLOR,

7 Care Samuel Maddox, Proctor, 462 L St. Ave.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **JAMES H. DOCKETT**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of February, 1892.

ANDREW J. MILLER,

7 Carusi & Miller, Proctors. 917 F St. n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

February 12th, 1892.

In the matter of the Estate of **CHARLES F. MOSEBY**, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased, has this day been made by **Mary S. Nash**.

All persons interested are hereby notified to appear in this Court on Friday, the 11th day of March next, at 1 o'clock P. M., to show cause why Letters of Administration on the Estate of the said deceased should not issue as prayed.

Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court.

A. B. HAGNER, Justice.

Test:

L. P. WRIGHT.

Register of Wills for the District of Columbia.

7 Gordon & Gordon, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Ellen C. Gray et al.

vs.

Ralph L. Galt et al. } No. 13,399. Equity Docket.

Upon consideration of the report of John P. Sheppard receiver, filed herein this day setting forth the sale by him as receiver in this cause to Margaret E. Selby for the sum of fifteen hundred dollars, of lot number 603 in Uniontown in the District of Columbia, according to the original plan of Uniontown, it is this 6th day of February, 1892, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 7th day of March, 1892.

Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter in the meantime, the first publication to be made within one week from this date.

A. B. HAGNER, Justice.

True copy. Test:

J. R. Young, Clerk.

7 By **L. P. Williams**, Asst. Clerk.

[Filed February 6, 1892. **J. R. Young**, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 18th day of February, 1892.

Charles C. Simmons

vs.

Lucretia Simmons. } No. 13,661. Eq. Doc. 33.

On motion of the complainant, by **J. Thomas Sothoron**, his solicitor, it is ordered that the defendant cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce, *a vinculo matrimonii*, on the ground of willful desertion and abandonment for the full and uninterrupted space of two years of complainant by the defendant.

A. B. HAGNER, Asso. Justice.

True copy. Test:

J. R. Young, Clerk.

7 By **L. P. Williams**, Asst. Clerk.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

Holding a Special Term for Orphans' Court Business.

February 12th, 1892.

In the matter of the Estate of **BENJAMIN B. MILLS** late of Laramie County, Wyoming, deceased.

Application for Letters of Administration on the Estate of the said deceased, has this day been made by Sallie Mills, his widow, and Benjamin Mills and others, children and next of kin of the decedent.

All persons interested are hereby notified to appear in this Court on the Eleventh day of March next, at 11 o'clock a. m., to show cause why Letters of Administration on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the **WASHINGTON LAW REPORTER** and **Washington Post**, previous to the said day.

By the Court.

A. B. HAGNER, Justice.

Test:

L. P. WRIGHT,

Register of Wills for the District of Columbia.

7 No. 4882. Ad. Doc. 18.

John Lyon, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

February 12th, 1892.

In the matter of the Estate of **JOHN RICHARD**, Senior, late of Wyoming Territory, deceased.

Application for Letters of Administration on the Estate of the said deceased, has this day been made by Peter Richard, and others, children and next of kin of the decedent.

All persons interested are hereby notified to appear in this Court on the Eleventh day of March next, at 11 o'clock a. m., to show cause why Letters of Administration on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the **Washington Law Reporter** and **Washington Post** previous to the said day.

By the Court.

A. B. HAGNER, Justice.

Test:

L. P. WRIGHT,

Register of Wills for the District of Columbia.

7 No. 4883. Ad. Doc. 17.

John Lyon, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

February 11th, 1892.

In the matter of the Estate of **ANNA KEY LAIRD**, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Mayhew Plater and Charles M. Matthews,

All persons interested are hereby notified to appear in this Court on the 11th day of March next, at 11 o'clock, a. m., to show cause why the said Will should not be proved and admitted to probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the **Washington Law Reporter** and **Evening Star** previous to the said day.

By the Court.

A. B. HAGNER, Justice.

Test:

L. P. WRIGHT,

Register of Wills for the District of Columbia.

7 No. 4822. Ad. Doc. 17.

H. S. Matthews, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

February 12th, 1892.

In the matter of the Estate of **ANTOINE JANIS**, late of Sheridan County, Nebraska, deceased.

Application for Letters of Administration on the Estate of the said deceased, has this day been made by Antoine Janis, Jr., and others, descendants and next of kin of decedent.

All persons interested are hereby notified to appear in this Court on the Eleventh day of March next, at 11 o'clock p. m., to show cause why the said Letters of Administration on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the **WASHINGTON LAW REPORTER** and **Washington Post** previous to the said day.

By the Court.

A. B. HAGNER, Justice.

Test:

L. P. WRIGHT,

Register of Wills for the District of Columbia.

7 No. 4831. Ad. Doc. 17.

John Lyon, Proctor.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

Holding a Special Term for Orphans' Court Business.

February 5th, 1892.

In the matter of the Estate of ELIZABETH A. TOWNSEND, late of Washington D. C., deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration c. t. a. on the Estate of the said deceased has this day been made by Samuel H. Ellis, Executor named in said Will, who prays that such Letters may be granted to Richard Sylvester.

All persons interested are hereby notified to appear in this Court on Friday, the 4th day of March next, at 10 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration c. t. a. on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter, the Evening Star, of Washington, D. C. and the New York Herald, previous to the said day.

By the Court.

A. B. HAGNER, Justice.

Test:

L. P. WRIGHT,

Register of Wills for the District of Columbia.
No. 4815. Ad. Doc. 17. C. Maurice Smith, Proctor.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

Holding a Special Term for Orphans' Court Business.

February 5, 1892.

In the matter of the Estate JOHN GRINDER, late of Washington, D. C., deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Edward M. Grinder.

All persons interested are hereby notified to appear in this Court on Friday, the 4th day of March next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Washington Post previous to the said day.

By the Court.

A. B. HAGNER, Justice.

Test:

L. P. WRIGHT,

Register of Wills for the District of Columbia.
No. 4812. Ad. Doc. 17. J. J. Darlington, Proctor.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

Holding a Special Term for Orphans' Court Business.

February 5th, 1892.

In the matter of the estate of MARY JANE ROSS, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased, has this day been made by Irving Gibson.

All persons interested are hereby notified to appear in this Court on Friday, the 4th day of March next, at one o'clock p. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER and Evening Star previous to the said day.

By the Court.

A. B. HAGNER, Justice.

Test:

L. P. WRIGHT,

Register of Wills for the District of Columbia.
No. 4759. Ad. Doc. 17. J. H. Adriams, Proctor.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

Caroline Amella Shedd vs. No. 13,445. Equity Doc. 32.

Upon consideration of the report of the trustee filed in this cause this day, it is this 2d day of February, 1892, ordered and decreed that the sale of the said sub lot fourteen (14) in square north of square two hundred and forty-two (242), as reported by the trustee, be ratified and confirmed, unless cause to the contrary be shown on or before the 2d day of March, 1892.

Provided a copy of this order be published in the Washington Law Reporter once in each of three (3) successive weeks prior to said date.

The amount of the said sale as reported is five thousand five hundred and eighty-seven dollars and sixty cents (\$5,587.65).

A. B. HAGNER.

True copy. Test: J. R. Young, Clerk.

By L. P. Williams, Asst. Clerk.

[Filed February 2, 1892. J. R. Young, Clerk.]

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

The 5th day of February, 1892.

William B. Moses and William H. Moses, partners, trading as W. B. Moses & Son. No. 32,422. At Law Docket 86. vs. Whitman Dunbar.

On motion of the plaintiff, by Mr. W. L. Cole, his attorney, it is ordered that the defendant, WHITMAN DUNBAR, cause his appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to recover a judgment against the defendant for the sum of two hundred and ninety-two and two dollars, with interest thereon from the 20th day of January, 1891, and costs of suit, and to condemn for satisfaction thereof certain goods and chattels which have been levied upon and seized under the writ of attachment in this case.

By the Court. M. V. MONTGOMERY, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

The 8th day of February, 1892.

George A. Burch, complainant, vs. No. 13,421. Eq. Docket 82.

Ella Burch, defendant. On motion of the plaintiff, by Mr. Eugene F. Arnold, his solicitor, it is ordered that the defendant cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce *vinculo matrimonii* on the ground of willful desertion and abandonment for the full and uninterrupted space of two years of complainant by the defendant.By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
By M. A. Clancy, Asst. Clerk.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of MARY J. RICKETTS, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of February, 1892.
JOHN W. HARSHA.

6 Campbell Carrington, Proctor.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of MARTHA R. WILSON, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of February, 1892.
MARTIN L. WELFLEY,

6 Frank T. Browning, Proctor. No. 302 East Cap. St.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of February, 1892.

Alexander Morris, guardian, vs. No. 13,673. Docket Eq. 33.

Morris S. Smith et al. On motion of the complainant, by Messrs. Jesse H. Wilson and John Ridout, his solicitors, it is ordered that the defendant, MORRIS S. SMITH, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a decree for the sale of lot 60 in the subdivision of square 182 in the city of Washington, District of Columbia, and the re-investment of the proceeds of sale in accordance with the provisions of sections 957 to 968 both inclusive, of the Revised Statutes relating to the District of Columbia.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
By L. P. Williams, Asst. Clerk.

The Washington Law Reporter.

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WASHINGTON, D. C., - - - MARCH 3, 1892

Dangerous Premises.

In *Walker v. Winstanley*, decided by the Supreme Court of Massachusetts in January, 1892, it appeared that the plaintiff went into the yard of a tenement house at night and was injured by falling through a cellar door which had been left open. It was held that he could not recover, because, although assuming that he was a licensee and not a mere trespasser, he had not kept to the pathways, and the invitation to the public to enter such a yard, if implied from the character of the house and the aspect of the grounds, does not extend to all parts of the yard irrespective of necessary lines of travel. The following is the opinion:

"We assume in favor of the plaintiff that he was within the scope of any invitation to the public having lawful business at the defendant's house, which fairly was implied by the aspect of the house and grounds. We assume also that the defendants had control of the premises. But an invitation only implied by the situation and look of the premises must be confined within somewhat definite limits. When the plaintiff went along the side of the defendant's house and fell down the cellar stairs, nothing said to him that the line he selected was appropriated to travel any more than the rest of the yard or open space between that and the next house. On the contrary, there was the well known chance of a cellar door being near the house. If, then, we assume that the plaintiff was warranted in being where he was so far that he was a licensee, and not a trespasser, still we think it impossible to extend the principle of invitation so as to cover the whole yard, irrespective of pathways, necessary lines of travel, or anything on the surface which promised security. In *Learoyd v. Godfrey*, 138 Mass., 315, the plaintiff's intestate was hurt in a place

pointed out as a passageway by the position of the buildings. The decision in *Curtis v. Kelly*, 153 Mass., 123, 26 N. W. Rep., 421, was made dependent upon the bill of exceptions being taken to mean that there was evidence of a passageway across the yard. The present case is more like *Reardon v. Thompson*, 149 Mass., 267, 21 N. E. Rep., 369. See, also, *Mistler v. O'Grady*, 132 Mass., 139."

Novelists' Law.

The graphic and usually accurate Mr. Grant Allen has surely fallen into a slight error in his recent novel called "Dumaresq's Daughter." A will is being witnessed, and the witness who attests in the presence of the solicitors of the testator is able to see the name of the person who takes the whole benefit of the will, and, indeed, can hardly help seeing it. Surely the ordinary practice is to so fold a will up that the names of the legatees cannot be seen by the attesting witnesses.

Miss Braddon, like the late Wilkie Collins, makes sure of her law before using it as material in her novels. In the latest—and by no means the least interesting—of her ingenious stories, "Gerard; or, the World, the Flesh, and the Devil," we see a good deal of a firm of London solicitors whose practice is both extensive and highly respectable. The characters of the two partners are cleverly contrasted, but Miss Braddon asks her readers to believe too much in the good nature of London solicitors when she describes a hard-headed Lincoln's Inn family lawyer drawing checks for £500 in favor of "a claimant" whose identity, though pretty clear, had not been established. Unlike most lady novelists, however, this authoress knows what invalidates a will, and the fact of marriage after execution of a will having this effect is made good use of in the *denouement* of the plot. Not a little of the power and flavor of her novels may be traced to the fact that "Miss Braddon," the novelist, is identical with Mrs. Maxwell, the capable and intelligent *femme d'affaires* and the valued friend of many clever men in the three learned professions, as well as in the fields of literature and art.—*Law Journal*.

More novelists' law. In a recent novel a firm of solicitors write to the villain of the piece that their client will withdraw their threatened action for forgery and embezzlement of certain bonds if the villain will reimburse the amount.

And some more. Mr. Oscar Wilde has written a clever and witty ghost story called "The Can

terville Ghost." An American millionaire buys a family estate from an English peer. The millionaire's daughter finds some jewels in the mansion house. These the purchaser of the estate returns to the peer with the following remarkable observations on the English law: "My lord, I know that in this country, mortmain is held to apply to trinkets as well as land, and it is quite clear to me that these jewels are, or should be, heirlooms." Why did not Mr. Oscar Wilde look up mortmain in a law dictionary before he employed the term? Further on the peer refuses to accept the jewels: "As for their being heirlooms," he says, "nothing is an heirloom that is not so mentioned in a will or legal document."

Again we have to record that Mr. Grant Allen, while he has written a very good tale in his "Dumaresq's Daughter," is not quite sound in his law. He has not sufficiently studied the law of testamentary capacity as affected by insanity. In chapter xvii Mr. Burchell, a solicitor, on drawing a will for a client in a hurry, tells him that the will may possibly be upset, because it is made in favor of a girl with whom he is merely acquainted, and the testator is in a state of excitement because he is about to depart next day for the Soudan as a war artist. We think if the will was disputed on the ground of the testator's insanity the jury would be directed to confine their attention to the point, not what were the testator's motives or the influences which led him to select his beneficiary, but did he realize what he was doing in passing over his relatives for a comparative stranger. Further, in chapter xxviii he talks of a will as if it were the same species of instrument as a deed, and speaks of a man inheriting money as next of kin and sole heir-at-law, and of a settlement which makes an illegitimate child "heir to the personality irrespective of the question of his birth."—*English Law Notes.*

CHATTEL MORTGAGES—Priorities of.—An unrecorded mortgage upon chattels, though unaccompanied by any change of possession, will prevail over a subsequent recorded mortgage given to secure a prior indebtedness, provided the earlier mortgage was not kept from the records by the mortgagee for any fraudulent purpose. The date of the chattel mortgage covering the machinery and most of the property in a mill is not affected by a subsequent agreement between mortgagor and mortgagee to substitute one article mentioned in the mortgage for another, and altering the wording of the mortgage to that effect. L. O., 78 Atk. Milton v. Boyd, Court of Chancery of New Jersey, Nov. 5, 1891, 22 Atl. Rep., 1078.

Supreme Court of the District of Columbia. IN GENERAL TERM.

EMMA SULLIVAN AND MARTHA BURNS

v.
ELIZABETH FLYNN.

1. The fact that the grantee in a deed of a person of unsound mind did not know the grantor to be *non compos* at the time of the execution of the deed gives it no validity.
2. The deed of an insane person is void and therefore cannot be ratified by acts *in pais*.
3. As to what is the effect upon a deed of a finding by a jury *de lunatico* that the grantor was insane at the day prior to the date of the deed, *quere*.

At Law. No. 28,812. Decided February 23, 1892.
The CHIEF JUSTICE and Justices COX and JAMES sitting.

MOTION for a new trial on a bill of exceptions taken on an action of ejectment. Judgment affirmed.

Mr. W. WILLOUGHBY for plaintiff.

Messrs. WM. F. MATTINGLY and DANIEL O'C. CALLAGHAN for defendants.

Mr. Justice JAMES delivered the opinion of the Court:

This is an action of ejectment, in which the plaintiffs, as heirs of Isabella Carney, seek to recover possession of a certain lot in Washington on the ground that their ancestress was insane when she executed the deed under which the defendant claims title.

The bill of exceptions shows that the plaintiffs gave evidence tending to show that Mrs. Carney originally derived title from the defendant; that afterwards she, with her husband, executed to Daniel Callaghan, as trustee for Patrick Power, the deed now impeached; that the defendant claimed that Callaghan made this purchase for her benefit, that she actually went into possession, and Callaghan and Power afterwards conveyed the premises to her. The plaintiff further gave evidence tending to show that Mrs. Carney was insane at the time of the conveyance to Callaghan, and that defendant had knowledge of such insanity. They also put in evidence the records of an inquisition *de lunatico*, in which the jury found that Mrs. Carney had been insane since the 1st day of May, 1887; a period which, it may be observed, did not begin till more than a fortnight after the date of her deed to Callaghan.

The defendant gave evidence tending to show that Power, the nominal beneficiary in the deed to Callaghan, had acted for her in the matter, that Power did not see Mrs. Carney during the transaction and was not told that she was insane; that she, the defendant, never heard, until

after the sale, that Mrs. Carney was insane, and that she was not in fact insane.

The consideration for the purchase was \$500 in cash and the note of Mr. Callaghan for \$500. The latter was paid to Thomas F. Miller, committee of Mrs. Carney. It is stated in the bill of exceptions that, after Mrs. Carney's death, Mrs. Burns, one of the plaintiffs, demanded of Miller the money that came into his hands as committee, and that on January 4, 1888, he advanced to her \$90 and took from her a receipt in the following form, signed by herself and her husband:

"Washington, D. C., January 4, 1888. Due Thomas F. Miller ninety dollars advanced to us by him out of funds in his hands belonging to the estate of Isabella Carney, deceased. In case the said fund or any part thereof is adjudged to belong to Martha Burns, then the said sum of ninety dollars to be charged against such part. And in the event that the said Martha Burns is not allowed a sufficient portion of said fund to cover the said ninety dollars, then we agree to pay to the said Thomas F. Miller the said sum of ninety dollars, or so much thereof as may be unpaid. Martha Burns, James Burns."

This agreement was required by Miller because he was of opinion that Mr. Carney would be entitled, as husband, to administer, use and appropriate the personal property of Mrs. Carney. In order to a settlement of that question, he afterwards filed a bill of interpleader.

Finally, Mr. Callaghan testified for the defendant that, at the time of the execution of the deed to him, there was nothing in the actions or manner of Mrs. Carney to indicate that she was of unsound mind, that he never had heard that she was so, and had no suspicion of such a fact.

The defendant there rested, and thereupon the plaintiff introduced evidence tending to show that Mrs. Burns did not understand that the \$90 advanced by Miller was to be taken from the funds in his hands for her benefit, but understood that if he could advance to her attorney the sum of \$90 she would see that Mr. Miller should be repaid.

Instructions were offered by both parties, but the bill of exceptions require consideration of only the third, fourth, fifth, and sixth requests of the defendant. The third was as follows:

"If the jury believe from the evidence that Isabella Carney, in April, 1887, at the time of the execution of her deed to Callaghan, was of unsound mind, yet if they further believe from the evidence that neither Mrs. Flynn nor her attorney, Callaghan, knew of such unsoundness of mind; that said parcel of land described in the deed was purchased by Mrs. Flynn in good

faith for its fair value; that the purchase money was paid to Mrs. Carney or her attorney, one-half in cash and the other half in a promissory note, secured by a deed of trust on the property, and that said transaction was free from fraud, then the plaintiffs are not entitled to recover, and their verdict must be for the defendant."

The bill of exceptions states briefly that this instruction was "given with modification to the effect that if not 'apparently sane,' then actual knowledge not necessary."

This instruction applied the doctrine of innocent purchaser to deeds of *non compotes*. The question of notice or good faith on the part of the grantee has no place in such cases. Whether the deed of a *non compos* be held to be absolutely void or only voidable, the only matter to be considered is the capacity of the grantor. The rule may work hardly when the grantee has no reason to suspect his incapacity, but capacity is not to be imputed to an insane person in order to help another person. "The acts and grants of infants and lunatics," says Mr. Washburn, "are regarded so far analogous to each other as to be governed by the same rules, and their deeds may be avoided as well against the grantees of their grantees as against the grantees themselves." 3 Wash., Real Prop., 225, and cases cited.

The defendant, however, was not injured by an error which gave her the benefit of conditions to which she was not entitled. The verdict against her necessarily found that the grantee did know that the grantor was of unsound mind, or that she was "not apparently sane." The defendant lost on conditions favorable to her.

The fourth and fifth instructions may be considered together. They were as follows:

"4. If the jury believe from the evidence that Thomas F. Miller, after his appointment as committee of Isabella Carney, received the proceeds of the sale of the said real estate from Mr. Wiloughby, the cash and note, applying a portion of the same to the maintenance and support of said Mrs. Carney; that he collected and received the amount of the note given for the deferred payment of the purchase money, and as such committee authorized the trustees under the deed of trust securing said note to release said property from the lien of said deed of trust, then said sale, if the jury should believe that Mrs. Carney was of unsound mind at the time of making the same, was ratified by said Miller as such committee, and the plaintiffs are not entitled to recover."

5. "If the jury believe from the evidence that

Mrs. Carney, at the time of the execution of the deed by her to Callaghan, was of unsound mind, yet if they further believe that the plaintiff, Mrs. Martha Burns, after the death of her mother, applied to Thomas F. Miller, who had been, under the decree of courts, appointed committee of her mother, and who held in his hands as such committee what remained of the proceeds of the purchase money of said property, and demanded of him her share of said money, (she knowing that said money was derived from the sale of said land by her mother in April, 1887,) then the same was a ratification of said sale by her, and she would not be entitled to recover."

We think that both of these requests were properly refused. Even if Mrs. Carney's deed was only voidable, it was not in the power of her committee to ratify it. He had only the management of her estate, and was not in privity with her title. No one but herself or heirs could validate her deed.

The fifth prayer was objectionable, even on the theory that the deed of an insane person is only voidable, and can therefore be ratified by *acts in pais*. We conceive that the same degree of strictness (as to confirmation) applies in the case of an insane person's deed which is applied to an infant's deed. As to the latter, the Supreme Court said in *Tucker v. Moreland*, 10 Pet. 75, 76 : "Admitting that *acts in pais* may amount to a confirmation of a deed, still, we are of opinion that these should be of such a solemn and unequivocal nature as to establish a clear intention to confirm the deed after a full knowledge that it was voidable."

The instruction asked by the defendant does not show that Mrs. Burns knew, when she applied for a part of the proceeds of the sale, that her mother was insane when she executed the deed in question. If it be said that this is indicated in the prayer by the statement that her application was made to her mother's committee, it is to be said, first, that a fact is not sufficiently stated where it is to be gathered from the instruction only by argument and inference; secondly, that the fact of insanity at the time of making the deed is not to be gathered from the fact that her mother came afterwards to be committed to a guardian.

The most substantial ground, however, in which we hold that neither the fourth or the fifth prayer could be granted is, that the deed of an insane person is void, and therefore cannot be ratified by *acts in pais*. We so hold on the authority of *Dexter v. Hall*, 15 Wall., 9.

It was objected at the argument that the only question to be determined in that case was

whether a power of attorney executed by an insane person was void or only voidable, and that the views expressed by Mr. Justice Strong concerning deeds of conveyance by such grantors were not binding on this court. It is true that the latter question was not an issue in that case; nevertheless we feel bound to recognize, in so full and careful a discussion, a deliberate intention of the court to establish a rule. We may add that, had no such declaration been made, we should have held the doctrine there announced. The contrary opinion of some American courts—namely, that modern deeds of conveyance, executed by *non compotes*, were only voidable—would seem to have been caused by the omission of Sir William Blackstone to observe that authoritative decisions had distinguished these deeds from the ancient feoffments with the livery of seisin, and that it should have been considered, even in his time, settled that they were absolutely void, while feoffments were voidable only. This oversight was pointed out by counsel and by the court in the case above referred to. To the authorities there cited may be added that of Mr. Williams, *Real Property*, 136.

The last exception is to the refusal of the following instruction:

6. "It appearing from the evidence introduced by the plaintiffs in this case that the jury of inquest as to the unsoundness of mind of said Isabella Carney had before them at the time the fact that her property consisted solely of the proceeds of said sale by her of the real estate in controversy, and that in and by their verdict, in compliance with the mandate of the writ *de lunatico* in that proceeding, they fix the date of the commencement of the unsoundness of mind of Mrs. Carney on May 1, 1887, subsequent to the date of said sale; it is not competent for the plaintiffs in this action to claim that she was of unsound mind at the time of said sale, and the verdict must be for the defendant."

Whatever may be the effect of a finding by a jury to inquire *de lunatico* that a person was insane from and after a certain day, such a finding does not even purport to determine the status of such person before that day. No one is affected by what is not found. This prayer, therefore, was properly refused. It may be added that we do not here determine the effect of the actual finding upon transactions made after the day fixed. *Judgment affirmed.*

INSOLVENT—Stock of, Issued for Patent in Name of Wife.—One who has a patent cannot, if insolvent, sell the same to a company and have shares of stock issued in his wife's name when she paid nothing therefor, as such an arrangement is merely a scheme to deprive his creditors of his future earnings. *Markham v. Whitehurst*, Supreme Court of Georgia, Nov. 4, 1891, 13 S. E. Rep., 904.

Exclamations of Pain, post item motam, as Evidence.

In *Jones v. President, etc.*, of the Village of Portland, Supreme Court of Michigan, December 21, 1891, it was held that a physician may not testify to exclamations and statements as to pain and suffering made by an injured person on an examination made after commencement of a suit for the injuries, and for the purpose of giving the same in evidence. The court said: "The plaintiff claims that such testimony is admissible, under the following authorities: *Hyatt v. Adams*, 16 Mich., 180; *Johnson v. McKee*, 27 Id., 471; *Elliott v. Van Buren*, 33 Id., 49; *Mayo v. Wright*, 63 Id., 32. *Hyatt v. Adams* was an action on the case against a physician for malpractice in treating the plaintiff's wife, causing her death within four days. All there is in the opinion upon this subject is found in a single paragraph upon page 200, and reads as follows: 'The court did not err in admitting the exclamations of pain and suffering uttered by the deceased, and her complaints as to the nature of her suffering during and after the operation, though some of them were in the absence of the defendant. This is the natural and ordinary mode in which physical pain and suffering are made known to others, and the only mode by which their nature and extent can be ascertained. Such exclamations and statements are therefore original evidence. But it was, of course, open to the defendant to show, or to raise an inference if he could, that they were feigned or intended to deceive. They were clearly admissible as tending to show the malpractice of the defendant, though not for the purpose of aggravating the damages. It will be noticed that the admission of the evidence was confined to a single fact to be proved, and that was the malpractice of the defendant; and it was expressly stated that it was not admissible for the purpose of aggravating the damages. That case is not analogous to this. The exclamations of Mrs. Jones to her physicians, made four days after the accident happened, could in no manner tend to prove that she met with a fall upon a sidewalk through the negligence of defendant. It would not be competent testimony to prove the main fact in this way from statements of the party. The only bearing it could have legitimately would be to aggravate the damages, and the case cited is authority that it is not admissible for that purpose. *Johnson v. McKee*, 27 Mich., 471, was not a case of negligence, but of assault and battery. Testimony was received showing the statements by plain-

tiff at various times concerning her pains and bodily suffering.

These were objected to as hearsay statements, and as declarations in her own favor. It was held by the court that, 'so far as they were not narrations of past as well as present suffering, it has been well settled that such statements of present feelings are facts which furnish the best, and often the only evidence of such physical conditions as are not open to discovery by sight or other senses of witnesses.' The question was no further considered. *Elliott v. Van Buren*, 33 Mich., 49, was an action for an assault and battery, and the court said: 'The declarations of a sick person, made from time to time, concerning present sufferings and sensations (not being relations of past occurrences), are the usual means of evidence where third persons testify on the subject.' *Mapo v. Wright* was an action brought against a physician for malpractice in setting a broken leg, in which the same principle was asserted and applied. None of these cases were actions for negligence, but the causes for action were the direct act and misfeasance of the defendant, and the testimony admissible as bearing upon the wrongful act alleged. In each of them, also, the exclamations were at a time when motives to make testimony favorable to the party in a suit such party had brought or contemplated to bring were absent. In this case it must be borne in mind that the witnesses were employed with a view of a suit to be brought, so far as was connected with two at least of the examinations made by them, and after the suit was brought, as to the other testimony relating to her exclamations or statements of her pain and suffering made to them. In *Railroad Co. v. Huntley*, 38 Mich., 544; S. C., 81 Am. Rep., 321, this court had occasion to pass upon the competency of testimony of physicians employed as 'a mere auxiliary to a lawsuit.' Chief Justice Campbell, in giving the opinion of the court, said: 'It has been held several times by this court that statements of pain and of its locality were exceptions to the rule excluding hearsay evidence. These statements are admitted only upon the ground that they are the natural and ordinary accompaniments and expressions of suffering. It would be impossible in most cases to know of the existence or extent or character of pain without them. They are received therefore as acts, rather than declarations, and admitted from necessity. The rule which admits declarations of present suffering has never been extended so as to include declarations either of past sufferings or of the causes in the past of such suffering, so as to make such

statements' proof of the facts. Declarations concerning the past are narratives, and not facts. Exclamations of suffering may be, and if honest, are parts of the occurrence itself. It is difficult to lay down any very clear line of admission or exclusion where the exclamation refers to the feelings of the moment. But we think it would not be safe to receive such testimony in any case where it is not the natural and ordinary expression of pain, called out without purpose, or in the course of medical treatment. The unstudied expressions of daily life, or the statements on which a medical advisor is expected to act, and which, if feigned, he should have skill enough to subject to some test of truth, stand on a footing which removes them in general from suspicion: But we cannot think it safe to receive such statements which are made for the very purpose of getting up testimony, and not under ordinary circumstances. The physicians here were not called in to aid or give medical treatment. The case had been relinquished long before, as requiring no further attendance. They were sent for merely to enable the plaintiff below to prove her case. The whole course of the plaintiff was taken to no other end. She had in her mind just what expressions the cause required. They were therefore made under a strong temptation to feign suffering, if dishonest, and a hardly less strong tendency, if honest, to imagine or exaggerate it. The purpose of the examination removed the ordinary safeguards which furnish the only reason for receiving declarations which bear in a party's own favor. The general rule in regard to other classes of hearsay evidence and statements admitted upon the same principle is that they must have been made *ante litem motam*, which is interpreted to mean not merely before suit brought, but before the controversy exists upon the facts. Stockton v. Williams, Walk., Ch. 120; 1 Doug. (Mich.) 546, citing the Berkeley Peerage Case, 4 Camp. 401; Richards v. Basset, 10 Barn & C. 657; Doe d. Tilman v. Tarver, Ryan & M. 141; Monkton v. Attorney General, 2 Russ & M. 160; Whitelock v. Baker, 13 Ves. 514. The language of Lord Eldon in Whitelock v. Baker has met with general acquiescence. He says: 'All are admitted upon the principle that they are the natural effusions of a party who must know the truth, and who speaks upon an occasion when his mind stands in an even position, without any temptation to exceed or fall short of the truth.' Page 514. It is not necessary to consider whether there may not be properly received in some cases the natural and usual expressions of pain, made under circumstances free from sus-

picion, even *post litem motam*. The case must at least be a very plain one which will permit this. The present controversy presents no such difficulty. The physicians were called in, not to give medical aid, but to make up medical testimony; and the declarations were made to them engaged in that work. It would be difficult to find a case more plainly within the mischief of the excluding rule.' While we adhere to the rule permitting such testimony in proper cases, we do not feel inclined to extend it beyond the necessities of the case, nor to cases clearly within the exception noted in the Huntley Case." See note 33 Am. Rep., 828. Railroad Co. v. Newell, 104 Ind., 264; S. C., 54 Am. Rep., 312, is to the contrary, and on the other hand Railroad Co. v. Johns, 36 Kans. 769; S. C., 59 Am. Rep. 609, seems to approve the Huntley Case with a "possibly." *Albany Law Journal.*

Champerty—Effect on Right of Action.

In Pennsylvania Co. v. Lombardo, decided by the Supreme Court of Ohio in January, 1892, it was held that, although a champertous agreement between a plaintiff and his attorney for the prosecution of a suit is void, and cannot be enforced between the parties to it, it is not available as a defense in the suit for the prosecution of which the champertous agreement was made. The following is from the opinion:

"The question as now presented is a new one in this State, as counsel for the plaintiff in error is frank enough to admit. It is whether the courts should not merely defeat any claim based upon the illegal agreement, but should go further, and, by way of punishment, also defeat the right of the plaintiff to recover in the action touching the prosecution of which he has made a champertous agreement with his attorney. Some cases are cited in support of this view; but they are contrary to the greater weight of authority, and seem unsupported by satisfactory reasons. It would seem that the law, on grounds of public policy, goes quite far enough when it defeats any advantages that may be sought by an enforcement of the agreement, without visiting upon the plaintiff a forfeiture of his right of action in the suit for the prosecution of which the attorney was employed. This is in analogy to our law in regard to usurious contracts, which simply defeats the usurious agreement, without affecting the right of the usurer to recover the principal loaned, with interest at the legal rate; champerty, like usury, not being an offense punishable by indictment in this State. It is stated by the author of a well-written arti-

cle on the subject, contained in 3 Amer. & Eng. Enc. Law, 68, 86, that, 'the better opinion would appear to be that the defense of champerty can only be set up when the champertous contract itself is sought to be enforced, and that the existence of a champertous agreement between the plaintiff and his attorney, or the fact that the plaintiff is prosecuting the case upon a contingent interest in the subject-matter of the litigation dependent upon success, is no defense to the action against the defendant.' An examination of the citations fully sustains the statement. In one of the cases cited (*Hilton v. Woods, L. R., 4 Eq., 432*) Malina, V. C., said: 'I have carefully examined all the authorities referred to in support of this argument (that the agreement between the plaintiff and his attorney, being champertous, required the suit to be dismissed), and they clearly establish that whenever the right of the plaintiff, in respect of which he sues, is derived under a title founded on champerty or maintenance, his suit will, on that account, necessarily fail. But no authority was cited, nor have I met any, which goes the length of deciding that, where the plaintiff has an original and good title to property, he becomes disqualified to sue for it by having entered into an improper bargain with his solicitor, as to the mode of remunerating him for his professional services in the suit, or otherwise. So that it is immaterial whether a champertous contract was shown by the evidence or not; for, admitting the agreement between Lombardo and his attorney to have been as claimed by counsel for the defendant, it was not sought in the action against the company to enforce it or derive any benefit from it.'

Long v. Short Sentences.

The faculty of determining the practical degree of culpability a person may have shown in the committal of a criminal offense, combined with that of accurately gauging the proper amount of judicial severity he should be dealt with, is one which, it must be regretfully confessed, is scarcely a leading characteristic of the English Bench. The inconsistent and disproportionate sentences imposed by different judges for exactly the same class of crimes, committed under identically similar circumstances, is much too familiar a feature of the legal administration of the present day to admit of any doubt about this. Indeed, the extraordinary disparity between them is so well understood, that little surprise is expressed when it is found that, in the course of a single assize, the infliction of twelve months' hard labor on a culprit on one

circuit is considered an adequate award for what his criminal counterpart on another has received fifteen years' penal servitude for. This flagrant inequality in the method of dealing out "even-handed justice" is much to be deprecated, if for no other reason than that it thereby appears that the application of the criminal law of this country is largely governed by conditions scarcely more definite than those which control the issue in a game of pitch-and-toss. But it is to be feared that so long as the policy of passing long or short sentences is left to the individual discretion of judges, this "glorious uncertainty of the law" will continue unabated; for, having regard to the subtleties of the distinctions which cloud the judicial mind in "giving judgment according to law," anything like uniformity in the measure of punishment inflicted on criminals can hardly be expected without further legislative provision for the restraint and assimilation of such judgments. In the absence of this it is curious to note the character of the conflicting arguments with which the champions of the long and the short sentence theories are respectively equipped. As to the merits of these, there is, of course, considerable diversity of opinion, but it may be said at once that a careful comparison of each clearly and unmistakably pronounced in favor of the latter, and shows that leniency is, as a rule, attended by more beneficial and satisfactory results than those which ensue from an undue conception of the virtues of severity. The question of "previous convictions" is almost the sole point upon which this unfortunate difference in the apportionment of punishments is based; for, with the exception of a few isolated cases of justices' justice, first sentences are, in the main, not very remarkable for their dissimilarity. It is alleged by the supporters of the more draconian system that those who have been previously convicted are "incorrigible," are "pests to society," are "unfit to be at large," and should therefore be treated with the utmost severity. But, say the others, if the primary object of a judge is to administer justice, pure and simple, and to "let the punishment fit the crime," it is difficult to see on what ground such unfortunates are sometimes visited with chastisement which is more suggestive of the "wild justice of revenge" than of that which is supposed to be dispensed in our courts. The stock argument that the community must be protected from the ravages of such malefactors is no adequate justification for punishing a man with redoubled vengeance simply because he happens to have had the misfortune of being punished

already for a similar offense. This distorted and unwarrantable construction which is often put upon the criminal laws of England has frequently been known to lead to such illogical and monstrous results as the imposition of seven years' penal servitude for the theft of a ha'porth of watercress.

On this principle a series of petty larcenies would, on sufficient repetition, ultimately consign the thief to penal servitude for life. By all means let society be protected, but as no such inhuman barbarity as this was ever contemplated by the legislature, it certainly does not come within the province of our judges to afford the so-called protection in question by resorting to a device so contrary to legislative intent, and so obviously abortive in its object as this. A moderate increase of punishment may sometimes operate with a very salutary effect, but the assumption that the reformation of a backslider who has already been convicted will be accomplished, or that the safety of the community will be guaranteed by simply doubling his punishment for each successive offense, is as ludicrous as it is unjust. So long as "incurribles" are not regarded as criminally insane, and proper provision made for their rational treatment as such, there is as much wanton cruelty in the application of the long sentence system to them as there formerly was in the penalties imposed upon lunatics, and the result is about equally efficacious. It is satisfactory, however, to know that there is a growing impression in judicial circles that the actual crime for which a person is being condemned should be considered as far as possible apart from any blemish in his previous record, which he has already fully expiated, and that it is no part of the duty of an administrator of justice to go through the farce of attempting to "protect" society by passing the terribly "exemplary" sentences in which so many occupants of the bench evidently delight when dealing with convicts who have already "done time."

But independently of the cruelty and injustice involved in the exercise of the long sentence policy, it is to be observed that its tendency is distinctly to defeat its own reformatory object. Experienced criminal lawyers do not hesitate to openly proclaim that, whereas a lenient sentence is often productive of substantial benefit as a deterrent to the recipient, one of the "exemplary" order is often injurious to both its victim and society in proportion to its very severity. It is argued that the effect of the latter upon most types of humanity is to unfit the condemned for anything but prison life and

discipline thereafter, to embitter his disposition and so distort and pervert whatever moral character he may have left, that he leaves prison and its tainted associations transformed into a modern Ishmael, with his hand against every man's, and imbued with all the requisite qualifications for pursuing the reckless career of crime which best befits his wrecked and ruined life. It is urged also that the severity of his punishment reminds him that had he committed a greater offense he would probably not have been much more harshly punished, and so, on the principle that one may as well be hung for a sheep as a lamb, his future depredations in the thieving, robbing, forging, or embezzling line are conducted on a scale of much graver magnitude than he would otherwise have had the desperation to attempt—if, indeed, under a lighter sentence, he would ever again have had the temerity to attempt at all. It is, moreover, asserted that juries, particularly at quarter sessions, having once discovered the inexcusable and painful severity of the chairman, often have great reluctance to convict at all, being unwilling to lend themselves to what they very properly abhor more than the crime itself—judicial injustice.

On the other hand, no reasonable doubt can be entertained, if statistics and the opinion of the most experienced are of any value, that the practical outcome of the short sentence system is a degree of criminal reformation and repression which under the older and rival regime was wholly unknown. The prevalence of crime in England in proportion to its population has undergone an amazing reduction in recent years, and although this may be due to some extent to the spread of popular education, it is unquestionable that it is largely traceable to the influence of the more sensible spirit of humanity with which its repression has recently been dealt.

No better illustration of this can be afforded than that which is exemplified in the operation of that benignant measure, the First Offender's Act, whereby thousands of the misguided, by escaping punishment altogether conditioned upon their future good behavior, have already been rescued from what would otherwise have been their probable fate—the doom and career of the confirmed felon. It is estimated that had this act been in force twenty years ago, the present number of habitual criminals—who are almost invariably recruited from the ranks of those who were treated as "pests to society" in their early youth—would be 50 per cent. less. There can be no stronger or more condemnatory commentary upon the pernicious effects of

long, vindictive, or "exemplary" sentences than the fact that the leniency of the average judge increases with his experience of the criminal classes. In a word, just as in former days the mistaken rigor which inflicted the death penalty for a theft of £5, produced an appalling amount of unnecessary murder as well in the perpetration of theft, so the long sentences of to-day, without being reformatory, are provocatives of a more serious order.—*Law Gazette*.

Court of Appeals of Maryland.

SALLY O. GUNN

v.

STEWART BROWN AND ARTHUR GEORGE
BROWN, TRUSTEES.

An equitable estate in fee, unfettered by any restraint, may be alienated the same as a legal estate in fee.

Decided January 29, 1892,
ALVET, C. J., ROBINSON, BRYAN, MILLER, IRVING, FOWLER
and McSHERRY, JJ., sitting.

APPEAL from the Circuit Court of Baltimore
City.

ISIDOR RAYNER for appellant.

BROWN & BRUNE for appellees.

Mr. Justice McSHERRY delivered the opinion of the Court:

The will of the late Dr. Thomas H. Wright was before this court for construction on two former occasions and the cases are reported in 60 Md., 50, and in 63 Md., 93. The conclusion then reached was that Mrs. Gunn, the testator's daughter, took under the will an equitable estate in fee, which was devisable and descendable. By the pending proceeding, which is an amicable one, we are asked to determine whether this same equitable estate is also alienable by her.

Ordinarily an equitable estate in fee is subject to the same incidents which attach to a legal estate in fee, and generally speaking these include the right to dispose of the estate by alienation as well as by devise. Lewin on Trusts, 692; Story Eq., Sec. 974; Ropes v. Upton, 125 Mass., 258. There are, of course, exceptions to this broad statement, and these exceptions may grow out of the character of the fee itself or may be created by some valid restriction upon the power of alienation. What those restrictions are, and the extent to which they are tolerated are subjects not involved in this inquiry.

As the estate of Mrs. Gunn has already been judicially determined to be an equitable fee, it remains only to ascertain whether there has been any restriction placed upon her right to alienate

it. If there be none, then, according to the principles we have just adverted to, she has the undoubted right to convey the estate, subject, as a matter of course, to the trusts created by the will. There are some restrictive provisions in the will, but they do not relate to an alienation. They were designed to protect the property of the daughters from the debts of their husbands, and perhaps from seizure under process against themselves. But whatever the object or design of these provisions may have been, they are certainly not capable, without a forced and unnatural construction, of being treated as a restraint upon the power to alienate, any more than as a restriction of the right to devise or bequeath.

Mrs. Gunn's estate being an equitable fee, unfettered by any restraint upon her power to alienate, it follows that she may lawfully convey that estate precisely as she holds it; that is subject to the existing trusts; and that the grantee will succeed to her interest incumbered with those trusts until, under the terms of the will, the termination of her life puts an end to the trusts and fees, and the property from the control of the trustees.

The pro forma decree which dismissed the bill will be reversed and the cause will be remanded that a decree may be passed in conformity to this opinion, the costs in both courts to be paid out of the trust estate.

Decree reversed and cause remanded..

The Jury Question Again.

The charge of the Lord Chief Justice of England in the baccarat case last summer served to call the attention of all common law communities to the practice, still surviving in Great Britain, of making a jury largely a registering agent of the view of the merits of the case entertained by the presiding judge. Perhaps there is no essential respect in which England has resisted the inroads of democracy more effectually than in the administration of justice at *nisi prius*. The lofty character and great ability of the English judiciary have aided in the continuance of the systematic invasion of the jury's province by the court, though of course the incomplete political regeneration of the English people has been chiefly responsible for it. There is no doubt but that American public sentiment condemns the attempt of a judge to overawe a jury, and that the average petit jury is sensible of its independent responsibility, resenting interference. An American judge of long service at *nisi prius* once said, in the hearing of the

writer, that he had learned from experience that, if his sense of justice particularly prompted that the verdict should go in a certain direction, to be only the more absolutely unbiased in his charge. If the jury were let alone they could be trusted to do what was right. If, however, the court endeavored to insinuate its own views of the merits, there was always danger of provoking a reactionary feeling, with the effect of causing a disagreement. Of course, a policy going to the other extreme is equally objectionable. The statutes of Illinois provide generally that "the court in charging the jury shall only instruct as to the law of the case," and that "juries in all criminal cases shall be judges of the law and of the fact." It has been held by the courts of that State that it is error for the court to assume or intimate in instructions to the jury what the evidence is upon any controverted question. The rulings of the highest court of Illinois would seem to prevent the judge from marshalling the facts, or rendering any of the assistance which a specially trained mind can always render to other minds, no matter how intelligent, if without such special training.

Although the most essential difference between an English and an American jury lies in the greater independence of judgment shown by the latter, resulting from the assimilation of Democratic ideas, yet the average of intelligence in the jury box is also apt to be higher in the United States than in England; and certainly the educational processes at present in operation here are bound to produce even a higher grade of jury material. The Chatauan system of instruction and the so-called University Extension movement are profoundly significant on the future of American Democracy. Circulating libraries are liberally patronized, and even if one read only the newspaper, he cannot, as they are edited to-day, help having a vast amount of knowledge on all classes of subjects insinuated into his mind. We have the authority of Mr. Bryce for the statement that "the Americans are an educated people, compared with the whole mass of the population in any European country except Switzerland, parts of Germany, Norway, Iceland, and Scotland; that is to say, the average of knowledge is higher, the habit of reading and thinking more generally diffused, than in any other country." It is, indeed, very apparent that the democratization of intellectual culture is now proceeding in America in a manner very similar to the democratization of political power under the influence of Jefferson during the first half century of our national life. Political

democratization endowed the average citizen with the independent character essential to competent jurymen. The diffusion of culture will bring him the enlightened mental capacity for the discharge of this duty.

The changed attitude of juries towards corporations undoubtedly marks a growth of judicial capacity among the people at large. Time was when a plaintiff's attorney in a suit against a corporation felt that if he could only get to the jury his battle was already won. But at the present day juries frequently bring in verdicts for corporations, and their "sympathy" verdicts for plaintiffs are much smaller on the average than they used to be. It happens, perhaps not very aptly for the point we are making, that there is printed to-day, on the first page, the opinion of the General Term of the Supreme Court in *Mellwitz v. Manhattan Railway Co.*, reversing a "sympathy" verdict, and in which Judge Barrett gracefully rebukes the tendency, which juries still occasionally manifest, to be charitable with other people's money at the expense of justice. But the verdict there was light, and the recent instances in which juries have, in actions against corporations or opulent individuals, given verdicts either for nominal damages or directly for defendants, have been quite numerous. Utterances such as Judge Barrett quotes from *Haring v. N. Y. & Erie RR. Co.* (13 Barb., 15), are plentifully sprinkled through the older reports. They do not occur anything like as frequently in recent opinions. The motions made by the Elevated Railway Companies to avail themselves of the privilege granted by chapter 208 of the Laws of 1891, amending section 970 of the Code, indicate a subsidence of the abject terror of juries formerly entertained by corporations. We deem it very improbable that twenty years ago the managers of a large corporation could, under any circumstances or from any motive, have entertained a proposition for the immediate or ultimate submission of questions of damages to juries.

In common with many others of the profession, who have had greater experience and opportunity for observation than ourselves, we favor the retention of the system of jury trials, with the modification of doing away with the requirement for a unanimous verdict. On this latter subject we had something to say in the issue of this journal for September 9, 1891, and we wish it might be thoroughly agitated in advance of the meeting of the American Bar Association next autumn, when, probably, discussion on the general theme of jury trials will be resumed.—*N.Y. Law Journal*.

Court of Appeals of Maryland.

JONAS J. SELDNER ET AL., EXRS.,
v.

ANDREW B. MCCREERY.

1. A bona fide purchaser for value without notice is protected, and cannot be adjudged to have notice of anything apparently improbable, and which diligent and reasonable inquiry will not disclose.
2. Where a title is perfect on its face, and no known circumstances exist to impeach it, or to put a purchaser on inquiry, one who buys bona fide and for value, occupies one of the most highly favored positions in the law. He must be protected at all events.
3. When a will is duly probated and letters granted, an executor has as full powers of administration as the law can under any circumstances give him; and although a caveat might thereafter be filed and the will annulled, still that will not affect the acts of the executor.

Decided January Term, 1892.

Mr. JUSTICE BRYAN delivered the opinion of the court:

Certain real estate was sold by the executors of Eva Seldner, deceased, under a power of sale given to them by her will. The purchaser alleged that the title was defective and refused to accept and pay for the land. A bill in equity was filed by the executors for the specific performance of the contract of the sale, and the court passed a *pro forma* decree dismissing the bill with costs. The executors have taken this appeal. The principal question is, whether the title of the property sold is such as a purchaser ought to be required to take.

The important facts affecting the title are as follows:

In 1825, Thomas Wilson, being seized in fee of the property in question, leased it for ninety-nine years, renewable forever, to Gerard T. Hopkins. In February, 1830, the unexpired term was conveyed to the executors of Bernard J. Von Kappf, subject to the ground rent, and upon certain trusts which will hereafter be more particularly mentioned. In March, 1830, the executors of Von Kappf sold this leasehold to William Norris and executed a bond of conveyance, binding themselves to convey the title to him when he should pay the purchase money in full. In June, 1833, they conveyed the title to his executors by a deed, which recited that the purchase money had been paid in full. By due conveyance (which it is not necessary now to mention in detail), this leasehold having been merged in the reversion expectant on it, the whole fee was conveyed to Florence Bailey, and she on the same day conveyed the fee to Eva Seldner, who was then the wife of Lewis Seldner. On the same day Seldner and wife con-

veyed to trustees for Florence Bailey another lot of ground by a deed which recited that it had been agreed that it should be accepted from Lewis Seldner at a valuation of \$15,000, in part payment of the purchase money of the lot conveyed to Mrs. Seldner. Lewis Seldner died in 1881, leaving a will in which he made Mrs. Seldner sole legatee for life, and made her and one of his sons executors.

We will consider the objections which have been made to this title. It is maintained that the leasehold was not validly conveyed by the executors of William Norris by Von Kappf's executors. We find the following clause in his will: "I desire that my executors hereinafter named, or the survivors or survivor of them may sell and dispose of my houses, lands, and real estate whenever they judge it to the advantage of my children. * * * The proceeds of the above said property is to be invested in safe and productive stocks or funds, or lent out on mortgage of undoubted security for the benefit of my children." The property was conveyed to the executors of Von Kappf on the following trust: "In trust for the uses and purposes and under and subject to the powers expressed, limited and declared in and by the last will of B. J. Von Kappf, in relation to the proceeds of those portions of his estate, a sale whereof was authorized by his said will." This purchase cannot be upheld under the clause just cited from Von Kappf's will. It cannot be included in the investments which they were authorized to make; that is to say, safe and productive stocks or funds, or mortgages of undoubted security. As the purchase was made with the funds of their testator's estate, of course the estate was entitled to the property. But if any loss had accrued, the executors would have been bound to make it good, inasmuch as they had without due authority exposed to hazard the money entrusted to them in a fiduciary capacity. But when the leasehold became the property of the estate, the executors were justified in dealing with it in the same manner as with any personality in their hands to be administered. The contract of sale to William Norris, and the subsequent deed to his executor were made before the Act of 1843, and consequently an order of the Orphans' Court was not required to give them validity. We can see no objection to them. The deed to Norris' executor contained a recital that all the purchase money had been paid. This recital is *prima facie* evidence of payment. Of course if it had not been paid the executors could have recovered by action at law upon the requisite proof.

But such suit has been barred by limitations for more than fifty years. It has not been suggested that a vendor's lien could be maintained at this time. It has, however, been alleged that there is no sufficient proof that the purchase money for this leasehold has been distributed to the legatees of Von Kappf. But the purchaser would not be responsible for any failure of duty on the part of the executors. We learn from the record, however, that in 1833 a bill in equity was filed by Von Kappf's executors praying the court to assume jurisdiction of the trusts and to provide for the statement of all necessary accounts in connection with the settlement of the estate. All the children of the testator, they being the residuary devisees and legatees, were made defendants, and were duly summoned and answered. An auditor's account was filed in due course in January, 1836, which distributed the estate, and we suppose that we are to understand from the agreement of counsel that it was duly ratified. All of the parties entitled to a share in the residue filed releases to the executors acknowledging the receipt of the amounts audited to them except one, who, at the date of the filing of the bill (June, 1833), was a boy, thirteen years of age. The executors were the guardians of this infant. His ratification of the auditor's report, unappealed from, has certainly concluded the rights of all parties to the suit. The infant became of age in 1841. If any breach of duty had existed on the part of his guardians, who were also the executors, he could then have obtained redress. Most certainly no appeal can now be taken from the order of ratification, and it must stand as a final settlement of the rights of the parties interested, in the distribution of the Von Kappf estate.

An objection is made to the title because Lewis Seldner, the husband, paid a portion of the purchase money. The evidence is to the effect that he owed his wife more than the amount paid by him. But we will consider the question without regard to this part of the proof. If this payment by Seldner was in prejudice of the rights of his creditors existing at the time, of course the property would be subject to their claims to the extent of the amount paid by him. But under no circumstances could it be held that a purchaser from Mrs. Seldner, or from her executors, would be affected by notice of any matter which he could not ascertain by diligent inquiry. Now the utmost degree of diligence could not discover anything in derogation of this title. The inquirer would find that this property was conveyed in April, 1874; that Lewis Seldner died

in 1881; that the estate has been fully administered by his executors; that a notice to creditors was duly published, requiring them to exhibit their claims against the estate on or before the 22d day of March, 1882; that twelve claims were proved against the estate, all of which except five have been paid, and that these five aggregate \$597; that the executors accounted for a personality amounting to \$54,134.13. He would also find that when Lewis Seldner died he was seized and possessed of real and leasehold estate estimated to be worth \$205,609.57. Without assuming that this estimate of value is altogether correct, we do not think that it can reasonably be inferred that any creditor of Seldner was delayed, hindered or defrauded by a gift of \$15,000 to his wife in April, 1874. We would have to suppose that there was a creditor at that time whose debt has not been barred by limitations; that he has been lying by without making any attempt to collect it; and that the debt was for a larger amount than could be collected from him during his lifetime, or from his estate after his death by the ordinary and convenient processes of law. Such a conclusion certainly cannot be rationally drawn from any facts which the most diligent inquiry would disclose, and therefore a purchaser of this property is not bound to adopt such a conclusion. A bona fide purchaser for value without notice is protected, and he cannot be adjudged to have notice of anything apparently improbable, and which diligent and reasonable inquiry would not disclose.

Another objection urged to the title is, that as the will was proven in common form, it may hereafter be caveatied, and the purchaser would thus be involved in litigation. When the probate of the will was made and letters testamentary duly granted, the executors had as full powers of administration as the law could under any circumstances give them. It is said that the probate might hereafter be annulled and the letters revoked. This is very true. But until this occurrence shall take place, the probate and grant of letters by the Orphans' Court must stand and be effectual. The administration of estates of deceased persons must not be delayed by the suggestion of future contingencies of this kind. The powers committed to executors in the solemn forms of law would be of no avail, if they are required to forbear the exercise of them for the reason that in some possible future event they may be withdrawn. The business of the Orphans' Court could not be conducted on such a basis. The statute has provided differently. By article 93, section 37, of the Code, it is enacted as follows:

All acts done by any executor or administrator according to law, before any actual or implied revocation of his letters, shall be valid and effectual. Sales duly made by an executor under a power given by a will would be good, and no one would be damaged by such sales; they would merely effect a change in the form of the property; the proceeds of the sales would go into the hands of the executor in the shape

of money. In case of a revocation of his letters, they would be turned over to his successor, in the trust of administration, to be distributed in the manner which should be decided by law. But we do not wish to rest our decision on this narrow ground. Where a title is perfect on its face, and no known circumstances exist to impeach it, or to put a purchaser on inquiry, one who buys bona fide and for value occupies one of the most highly favored positions in the law. If circumstances afterwards come to the light which invalidates the title of the seller, there is nothing to prevent redress against him in behalf of the party who may be injured, but the innocent purchaser must be protected at all events.

No facts are shown which render it in any degree probable that Mrs. Seldner's will is in any respect invalid. It has not been suggested that she was incompetent to make a will, or that it was procured by fraud, undue influence or in any other improper manner. Nor has it been shown that there is a probability that it will hereafter be made the subject of a contest. We have been referred to *Emmert v. Stouffer*, 64 Md., 543. In that case the Orphans' Court had refused probate to an alleged will under circumstances which deprived their adjudication of all validity. This court held that the proceedings of the Orphan's Court did not prevent the will from being propounded and probated in the future. The will was a standing menace to purchasers, and a warning that the title of the heirs at law of the deceased was liable to be defeated by a probate. This court had no difficulty in deciding that they would compel a purchaser of real estate from the heirs at law to take the property. He would have taken it with litigation made ready to his hand.

By the contract of sale in this case, the sellers were bound to furnish the purchaser an agreement on the part of a mortgagee of the property to accept payment of the mortgage debt. We will reverse the pro forma decree of the Circuit Court with costs above and below, and direct a decree for the specific execution of the contract of sale, on condition that the agreement of the mortgage is obtained in binding form and on condition that the contract of sale is ratified by the Orphans' Court.

Decree reversed and cause remanded, in order that the Circuit Court may pass a decree in accordance with this opinion.

Legal Notices.

FIRST INSERTION.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 21 day of March, 1892.

Ella T. Mulliken, plaintiff, { No. 13,586. In Eq. Doc. 33.
vs.
William L. Mulliken, defendant.)

On motion of the plaintiff, by Mr. O. B. Hallan, her solicitor, it is ordered that the defendant, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce from the bond of marriage and restoration to her maiden name of Ella Trembley on the ground of two years' abandonment and desertion.

A. B. HAGNER, Asso. Justice.
A true copy. Test: J. R. Young, Clerk.

By M. A. Clancy, Asst. Clerk.
[Filed March 2, 1892. J. R. Young, Clerk.]

Legal Notices.

TRUSTEE'S SALE OF VALUABLE LOT ON NORTH SIDE OF NEW YORK AVENUE BETWEEN FOURTH AND FIFTH STREETS NORTHWEST, AND BRICK HOUSE AND STORE, NO. 1330 SEVENTH STREET NORTHWEST.

Under and by virtue of a decree passed on February 5, 1892, in equity cause No. 13,201, docket No. 32 of the Supreme Court, District of Columbia, wherein Henry Stewart et al. are plaintiffs and John Stewart et al. are defendants, the undersigned will offer for sale to the highest bidder on WEDNESDAY, THE NINTH DAY OF MARCH, A. D. 1892, AT FIVE O'CLOCK, P. M., in front of the premises, original lot five (5) in square five hundred and fourteen (514), Washington, D. C., fronting sixty-six (66) feet ten (10) inches on New York ave., by an average depth of about one hundred and forty-four (144) feet ten (10) inches, with a 15 foot side and 30 foot rear alley.

And thereafter on the same day at HALF PAST FIVE O'CLOCK, P. M., they will offer for sale under said decree, in front of the premises, the sixteen (16) feet ten (10) inches front on Seventh St., by the depth of one hundred (100) feet next to and south of the north sixteen (16) feet ten (10) inches front of original lot (10) in square four hundred and twenty-three (423), Washington, D. C.

Terms of sale: One-third of purchase money of each tract in cash, one-third in one year and one-third in two years, with interest on deferred payments at the rate of 6 per cent per annum, payable semi-annually, deferred purchase money to be secured by deed of trust on the premises sold, or all cash, at the option of the purchaser. A deposit of \$200 will be required on each piece at the time of sale. All conveyancing and recording at purchaser's cost. If terms of sale are not complied with within ten (10) days the trustees reserve the right to resell at defaulting purchaser's risk and cost.

JACKSON H. RALSTON, Trustee,
Sun Building.

IRVING WILLIAMSON, Trustee,

458 Louisiana ave.

L. CABELL WILLIAMSON, Trustee,

460 Louisiana ave.

9—it WALTER B. WILLIAMS & CO., Aucts.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 2d day of March, 1892.

August J. A. Lohse } vs. { No. 13,746. Equity Doc. 33.
Jennie Lohse. }

On motion of the plaintiff, by Mr. G. W. Albright, his solicitor, it is ordered that the defendant cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for divorce a *vinculo matrimonii*, on the ground of desertion.

By the Court. A. B. HAGNER, Justice.
True copy. Test: J. R. Young, Clerk.

By M. A. Clancy, Asst. Clerk.

Filed March 2, 1892. J. R. Young, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 3d day of March, 1892.

Walter S. Cox, trustee, vs. Eliza W. Patterson, Elizabeth P. Patterson, Pierre La Montague, Katharine P. La Montague, Francis Winslow, Harriet P. Winslow and Augustus Jay.

No. 13,707, Eq. Doc. 33.

On motion of the plaintiff, in proper person, it is ordered that the defendants above named, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to have the court, by its decree, confirm the appointment, made by complainant, of Augustus Jay and Francis Winslow, as trustees under the will of Catharine Pearson, in the place of Carlile Patterson, and William H. Phillip, deceased, and also to have the complainant relieved from the trust.

By the Court. A. B. HAGNER, Justice.
True copy. Test: J. R. Young, Clerk.

By L. P. Williams, Asst. Clerk.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters Testamentary on the personal estate of MICHAEL RODY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 24th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 24th day of February, 1892.

BRIDGET RODY,

9 R. B. Lewis, Proctor.

No. 18 Mass. ave. n. e.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters of Administration on the personal estate of ANN RAFFERTY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of February, 1892.

JULIA R. TRUMBULL,

9 James G. Payne, Proctor.

Cr. Jas. G. Payne,

City Hall.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of THOMAS J. COFFEE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of February, 1892.

J. WILLIAM LEE,

9 A. H. Bell and Geo. E. Johnson, Proctors.

No. 332 Pa. ave. n. w.

This is to Give Notice

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of BENEDICT O. GREENWELL, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 25th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 25th day of February, 1892.

JOS. M. JOHANNES,
S. A. H. MCKIM,

9

25 5th St. s. e.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

February 26th, 1892.

In the matter of the Estate of JANE M. FRANKS, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Mary F. Wall.

All persons interested are hereby notified to appear in this Court on Friday, the 25th day of March next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: L. P. WRIGHT,

Register of Wills for the District of Columbia.

9 No. 4547. Ad. Doc. 17. Randall Hagner, Proctor.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of HARRY J. RUDY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 27th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of February, 1892.

JOHN F. KELLY,

81 G St. n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of ALBERT M. EVANS, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 24th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 24th day of February, 1892.

MARTIN L. LICHTY,

9 J. Bruce Webb & E. L. Schmidt, Proctors. 3219 P St.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

February 26, 1892.

In the matter of the Estate of MICHAEL BELCHER, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Thomas G. Addison, a creditor.

All persons interested are hereby notified to appear in this Court on Friday, the 25th day of March, next, at 1 o'clock p. m., to show cause why Letters of Administration on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Washington Post previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: L. P. WRIGHT,

Register of Wills for the District of Columbia.

9 No. 4850. Ad. D. 17. Waters & Taylor, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

February 26th, 1892.

In the matter of the estate of ALBERT BOULDON, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased, has this day been made by George R. Williams.

All persons interested are hereby notified to appear in this Court on Friday, the 25th day of March next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: L. P. WRIGHT,

Register of Wills for the District of Columbia.

9 No. 4855. Ad. Doc. 17. W. K. Duhamel, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 29th day of February, 1892.

Ada Hazlerigg v. Oliver Hazlerigg } No. 13,388. Eq. Docket 32.

On motion of the plaintiff, by Mr. H. B. Moulton, her solicitor, it is ordered that the defendant, OLIVER HAZLETRIGG, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain an absolute divorce from the defendant on the ground of desertion and abandonment.

By the Court. A. B. HAGNER, Justice, &c.

True copy. Test: J. R. Young, Clerk, &c.

9 By M. A. Clancy, Asst. Clerk.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**
Holding a Special Term for Orphans' Court Business.

February 28th, 1892.

In the case of Robert W. McPherson, Executor of RICHARD TILGHMAN EARLE, U. S. Army, deceased, the Executor aforesaid has, with the approval of the court, appointed Friday, the 25th day of March, A. D. 1892, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Washington Post previous to the said day.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.

9 No. 4208 Ad. D. 16.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Samuel W. Connor }
v. } No. 13,234. Equity Docket.
Elizabeth H. Smith.

The trustee herein, J. Holdsworth Gordon, having reported an offer of seventy-five cents per square foot for the East sixteen feet by the depth of ninety feet of lot forty (40) in square seven hundred and thirty-two (732), it is, this 2d day of March, 1892, ordered by the court, that the said sale be ratified and confirmed unless cause to the contrary be shown on or before the 2d day of April, A. D. 1892.

Provided a copy of this order be published once a week for three successive weeks prior to said date in the Washington Law Reporter. The report states that the amount of said sale aggregates the sum of ten hundred and eighty dollars.

A. B. HAGNER, Asst. Justice.

True copy. Test: J. R. Young, Clerk,
By M. A. Clancy, Asst. Clerk.
Filed March 2, 1892. J. R. Young, Clerk.

SECOND INSERTION.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of ROBERT C. BERNAYS, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 9th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of February, 1892.
ELIZABETH BERNAYS,

8 Isaac M. Nordlinger, Proctor. 500 7th St. n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters Testamentary on the personal estate of CARL L. WINDHOLZ, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of February, 1892.

WM. A. RUESS,

8 Chapin Brown, Proctor. 605 P St. n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration c.t.a. on the personal estate of SAMUEL C. POMEROY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of February, 1892.

AMERICAN SECURITY AND TRUST CO.

8 Edward A. Bowers, Proctor. Percy B. Metzger,
Trust Officer.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,**
Holding a Special Term for Orphans' Court Business.
February 19th, 1892.

In the matter of the Estate of CAROLINE C. ACKER, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Walter H. Acker.

All persons interested are hereby notified to appear in this Court on Friday, the 18th day of March, next, at one o'clock P. M., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.

This is to Give Notice

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of JOHN MILLER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscribers, on or before the 20th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 20th day of February, 1892.
CATHARINA MILLER,
8 Carusi & Miller, Proctors. JOSEPH BISCHOF,
311 Q St., n. w.

THIRD INSERTION.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of JOSEPH LOCHBOEHLER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of February, 1892.
ROBERT A. PHILLIPS,
1419 New York Ave.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 16th day of February, 1892.

Anna Doyle, plaintiff,
vs. } No. 13,630. Eq. Docket 38.
Jacob Dixon Doyle, defendant.

On motion of the plaintiff, by Mr. J. M. Vale, her solicitor, it is ordered that the defendant, JACOB DIXON DOYLE, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is a divorce from the bond of marriage for desertion for the period of two years last past.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk.
7 By L. P. Williams, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 16th day of February, 1892.

E. Wesley Kirby }
vs. } No. 13,650. Eq. Docket 38.
Emeline M. Kirby.

On motion of the plaintiff, by Mrs. Belva A. Lockwood, his solicitor, it is ordered that the defendant, EMELINE M. KIRBY, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for divorce on the ground of willful desertion for the uninterrupted space of more than two years.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
By M. A. Clancy, Asst. Clerk.

Legal Notices.**This is to Give Notice**

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters Testamentary on the personal estate of ELIZABETH B. DYER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of February, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day of February, 1892.

JAS. L. TAYLOR,
7 Care Samuel Maddox, Proctor, 462 La. Ave.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of JAMES H. DOCKETT, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of February, 1892.

ANDREW J. MILLER,
7 Carusi & Miller, Proctors. 917 F St. n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

February 12th, 1892.

In the matter of the Estate of CHARLES F. MOSEBY, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased, has this day been made by Mary S. Nash.

All persons interested are hereby notified to appear in this Court on Friday, the 11th day of March next, at 1 o'clock P. M., to show cause why Letters of Administration on the Estate of the said deceased should not issue as prayed.

Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT.
Register of Wills for the District of Columbia.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Ellen C. Gray et al. } vs. No. 13,399. Equity Docket.
Ralph L. Galt et al.

Upon consideration of the report of John P. Sheppard, receiver, filed herein this day setting forth the sale by him as receiver in this cause to Margaret E. Selby for the sum of fifteen hundred dollars, of lot number 603 in Uniontown in the District of Columbia, according to the original plan of Uniontown, it is this 6th day of February, 1892, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 7th day of March, 1892.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter in the meantime, the first publication to be made within one week from this date.

A. B. HAGNER, Justice.

True copy. Test: J. R. Young, Clerk.
7 By L. P. Williams, Asst. Clerk.
[Filed February 6, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 18th day of February, 1892.
Charles C. Simmons } vs. No. 13,661. Eq. Doc. 33.
Lucretia Simmons. }

On motion of the complainant, by J. Thomas Sothoron, his solicitor, it is ordered that the defendant cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce, a *circulo matrimonii*, on the ground of willful desertion and abandonment for the full and uninterrupted space of two years of complainant by the defendant.

A. B. HAGNER, Asso. Justice.

True copy. Test: J. R. Young, Clerk.
7 By L. P. Williams, Asst. Clerk.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

Holding a Special Term for Orphans' Court Business.

February 12th, 1892.

In the matter of the Estate of BENJAMIN B. MILLS late of Laramee County, Wyoming, deceased.

Application for Letters of Administration on the Estate of the said deceased, has this day been made by Sallie Mills, his widow, and Benjamin Mills and others, children and next of kin of the decedent.

All persons interested are hereby notified to appear in this Court on the Eleventh day of March next, at 11 o'clock a. m., to show cause why Letters of Administration on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER and Washington Post, previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT.
Register of Wills for the District of Columbia.
7 No. 4832. Ad. Doc. 18. John Lyon, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

February 12th, 1892.

In the matter of the Estate of JOHN RICHARD, Senior, late of Wyoming Territory, deceased.

Application for Letters of Administration on the Estate of the said deceased, has this day been made by Peter Richard, and others, children and next of kin of the decedent.

All persons interested are hereby notified to appear in this Court on the Eleventh day of March next, at 11 o'clock a. m., to show cause why Letters of Administration on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Washington Post previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT.
Register of Wills for the District of Columbia.
7 No. 4833. Ad. Doc. 17. John Lyon, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

February 11th, 1892.

In the matter of the Estate of ANNA KEY LAIRD, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Mayhew Plater and Charles M. Matthews,

All persons interested are hereby notified to appear in this Court on the 11th day of March next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT.
Register of Wills for the District of Columbia.
7 No. 4822. Ad. Doc. 17. H. S. Matthews, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

February 12th, 1892.

In the matter of the Estate of ANTOINE JANIS, late of Sheridan County, Nebraska, deceased.

Application for Letters of Administration on the Estate of the said deceased, has this day been made by Antoine Janis, Jr., and others, descendants and next of kin of decedent.

All persons interested are hereby notified to appear in this Court on the Eleventh day of March next, at 11 o'clock p. m., to show cause why the said Letters of Administration on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER and Washington Post previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT.
Register of Wills for the District of Columbia.
7 No. 4831. Ad. Doc. 17. John Lyon, Proctor.

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WASHINGTON, D. C., - - - MARCH 10, 1892

Publisher's Announcement.

IT is with regret we have to announce that Mr. FRANKLIN H. MACKEY, who has so long, so earnestly, and so zealously edited THE LAW REPORTER, has felt impelled to resign his position.

Mr. ERASTUS THATCHER, author of Thatcher's works on Practice in the Supreme, Circuit and District Courts of the United States, has been appointed to fill the vacancy made by Mr. MACKEY'S resignation.

L. R. Co.

HAVING been called just now to the editorial work upon this paper, we take hold of it with the hope and purpose of making the WASHINGTON LAW REPORTER useful and valuable in future, as it has been in past years under the able and efficient guidance of its former editors.

The lawyers of the United States are aware, and do not need to be told, that the Supreme Court of the District of Columbia, in special and in general term, has larger and more varied jurisdiction than has any other one court within the limits of the Federal Union. It has original jurisdiction of every class of cases which are originally cognizable in the Circuit and the District Courts of the United States—at law, in equity, in admiralty, and in criminal matters. And it has cognizance of all appeals from Patent Office decisions. Locally, it has similar jurisdiction to that

of the several State courts, as to law, equity, and probate matters.

In view of these facts, the Supreme Court of the District necessarily adjudicates upon many important cases, and upon numerous intricate questions of law. And it is not too much to say, that the court is made up of a corps of eminent judges whose decisions are not surpassed for legal learning and substantial accuracy.

For the benefit of the local bar and of the profession throughout the Federal Union, the decisions of this court should be brought forward in convenient form, at an early date after they are rendered; and it has been heretofore, and will continue to be, the intention of THE LAW REPORTER to render this service to the profession.

Brief abstracts from decisions of the Supreme Court of the United States, in advance of reports by the official reporter, will hereafter be included in this paper.

We shall also endeavor to gather and include herein some decisions of the United States circuit courts, and of the several circuit courts of appeal, and of the State courts of the country.

AN INTERESTING CASE, as involving a construction of the Statute of Limitations in force in this District, was decided on demurrer, by Justice Montgomery in the Circuit Court a few days ago: Mann v. Cooper's Admx., No. 31,894, Law. Plaintiff brought an action of debt upon a judgment had against Cooper in October, 1874. Defendant pleaded limitations in three different pleas. Plaintiff replied (1) that in 1879, and within twelve years a part payment of said judgment was made by Cooper; (2) that Cooper at the time the judgment was rendered was a resident of the District of Columbia, but afterwards, in June, 1875, removed therefrom and never returned, and left no effects sufficient and known for the payment of his just debts, in the hands of some person or persons who assumed the payment thereof to his creditors, (Act 1715,

Ch. 23, Sec. 5,) and, (3) that in May, 1876, said Cooper agreed in writing with the plaintiff, upon a new and valuable consideration, that the plaintiff should have at all times the right to execute the said judgment and collect the amount due thereon, wherefore the defendant was estopped, etc. On demurrer to these replications it was *Held*, 1st. That the replication of part payment was bad, part payment being but evidence to support an averment of a new promise. 2d. That if a new promise had been replied in proper form it would have been bad because a judgment cannot be revived by a new promise. 3d. The second replication was bad because it appeared that Cooper was within the District at the time the cause of action accrued, and for a reasonable time thereafter; that the Statute was not stayed by his subsequent removal, and that Sec. 5, Ch. 23, Act 1715, applies only to causes of action accruing after removal of the debtor. 4th. The third replication was bad, because the language of the agreement, as pleaded, did not import an obligation not to plead limitations.

Supreme Court of the District of Columbia.

FRANKLIN JENNINGS

v.

ELIZABETH WEBB.

LANDLORD AND TENANT—DECLARATION.

1. In a landlord and tenant proceeding to turn the defendant out of possession, the plea of title brings the case to this court. But the rule which requires the plaintiff to file a declaration as in ejectment, does not convert the proceeding into an action of ejectment, in which the plaintiff recovers upon the strength of his title.
2. In such a proceeding, unless the plaintiff establishes the relation of landlord, as between himself and the defendant, no matter what the form of the declaration is, he is not entitled to recover.
3. In delivering the opinion of the Court, Mr. Justice Cox said: "I have grave doubts, speaking for myself, whether this court can review the findings of the judge as to the facts."

At Law. No. 29,634. Decided February 1, 1892.
Justices HAGNER, Cox and JAMES sitting.

Messrs. S. R. BOND and C. H. CRAGIN for Plaintiffs.

Mr. D. O'C. CALLAGHAN for defendant.

Mr. Justice Cox delivered the opinion of the Court:

This is rather a tedious case to recite, and I will simply state the outline of it. It appears that many years ago a lot of ground, lot 23, in square 107, or at least the east thirteen feet four inches thereof, was occupied by a house known as No. 1804 L street, and was conveyed to Paul Jennings, and the adjoining part of the same, being No. 1806 L street, was conveyed to him and his daughter Frances. The deed did not use the word heirs, but that is not very material to the present inquiry. The daughter Frances apparently was an imbecile. It seems that Elizabeth Webb, who was a step-daughter of Paul Jennings, was originally put by him into this house, No. 1806, adjoining the one conveyed exclusively to Paul, to take care of his daughter Frances, and she remained there for many years. In 1862 Elizabeth Webb claims that she had bought the entire property, No. 1806, from Paul. Paul died leaving three children—Francis, John and Franklin. Francis died without issue, and John died leaving children. The plaintiff claims that the defendant, Elizabeth Webb, was put in the house as a tenant of Paul Jennings and has remained there always as a tenant. He claims that he owns one undivided half of the property and, his sister having died, that his brother's children own the other undivided half. The plaintiff instituted a landlord and tenant proceeding to turn Elizabeth Webb out, and she pleaded title and that brings the case to this court. He then filed his declaration in ejectment in which he claimed one undivided moiety in the lot. There seems to be a little misapprehension of the nature of this proceeding. While our rule requires the plaintiff to file a declaration, as in ejectment, that does not convert the proceeding into an action of ejectment at all, in which the plaintiff recovers upon the strength of his title. In this proceeding, unless he establishes the relation of landlord between himself and the defendant, no matter what the form of the declaration is, he is not entitled to recover. I have always held that at Special Term, and that is the opinion that we entertain now. It is still a landlord and tenant proceeding.

The case was submitted to the justice instead of the jury upon the facts. He found that in 1862 this defendant went into possession, and while in possession of No. 1806 she acquired a tax deed to the property and Paul Jennings himself took a deed to the other house, No. 1804, and that arrangement was made by his consent, and from that time she held adversely; that is, she claimed title to one undivided half of the lot as her own, the other undivided one-half belonging to Frances Jennings.

A motion was made for a new trial upon the usual grounds applicable to a verdict; that is, that the finding was against the weight of the evidence, etc. I have grave doubts, speaking for myself, whether this court can review the findings of the judge as to the facts. The statute does not contain anything about it. The statute provides that a verdict may be set aside as against the evidence. It does not provide that the finding of a judge upon the facts can be set aside as against the evidence. But upon looking at such evidence as is set out in the record, we do not see that the finding of the court was against the weight of the evidence, and we assume the fact, therefore, to be that from 1862 up to the commencement of this proceeding, more than twenty years, the defendant was holding and claiming an undivided part of this property as her own, and that gave her right to stay there. Now the plaintiff is at liberty to bring his action in ejectment to recover an undivided half and to be put in possession of that to hold in common with the defendant, but she is entitled also to retain possession of her one-half. He is not permitted to turn her out as his tenant; she is not his tenant; she has a right to be there. And therefore the landlord and tenant proceeding could not be sustained. It is clear that the judge was correct in his reasons for the judgment given upon the facts shown in the record, and her right to remain there was good against the claim of this plaintiff.

The judgment is affirmed.

Supreme Court of New York—Circuit.

LISTMAN v. HICKEY.

REAL ESTATE UNDER CONTRACT MATERIALLY DAMAGED BY FIRE—VENDEE ALLOWED TO RESCIND AND TO RECOVER DEPOSIT AND EXPENSES.

Decided February, 1892.

Motion for a new trial.

Action by vendee in an executory contract of sale to recover back deposit paid at time of signing contract and counsel fees and disbursements on examination of title to premises. Contract dated December 5, 1889. Title to be closed January 3, 1890. The vendee rescinded contract on that day, because part of the building was materially and substantially destroyed by fire on December 31, 1889. The contract contained no insurance clause.

The vendor testified that the property was insured and that he received the insurance moneys, never tendered the policies or the proceeds to the vendee, nor offered to allow the amount thereof nor the amount of damage by fire.

After trial before Mr. Justice George L. Ingraham and a jury, a verdict was directed for the plaintiff for \$1,355.90, subject to the opinion of the court, and a motion made by defendant for a new trial.

INGRAHAM, J.—By the contract the defendant agreed to convey to plaintiff a lot of land known as No. 661 Madison Avenue, New York City, with the house as thereon erected and the "carpets, shades, &c., now in said house," and the defendant agreed to execute, acknowledge and deliver to the plaintiff a proper deed for the conveying and assuring to her the fee simple of the said premises, free from all encumbrances, on or before January 3, 1890, at 1 o'clock p.m. Prior to that day the premises were damaged over \$2,000 by fire, and some of the carpets and shades in the said house were destroyed. The damage caused by the fire was not repaired prior to said 3d day of January, and the deed that defendant tendered to plaintiff as a compliance with the contract did not convey the premises in the condition that they were in at the time the contract was made, but in a damaged condition, and part of the property which defendant agreed to convey had been actually destroyed.

It seems to me that there was a breach of the contract on the part of the defendant by the failure of the defendant to offer to convey to the plaintiff the premises in the condition that they were in at the time the contract was signed.

In the case of *Smythe v. Sturgis*, 108 N. Y., 502, it was held that the defendant was entitled to the premises in the condition in which they were bargained for, and his refusal to take them in an altered and inferior condition was not a breach of the contract.

The plaintiff in this case was entitled to a conveyance of the premises in the condition in which they were in when the contract was signed, and a conveyance of the premises in such condition was the only way by which the defendant could complete the contract on his part; he failed to tender to the plaintiff a performance of this obligation assumed by him upon the execution of the contract, and the plaintiff is therefore entitled to recover.

Motion for new trial denied.

—*N. Y. Law Journal*, Feb. 20.

Supreme Court of the District of Columbia.

GARDINER SHERMAN

v.

JESSIE GORDON SHERMAN.

In Equity. No. 11,615. Decided February 8, 1892.

The CHIEF JUSTICE and Justices COX and JAMES sitting.

1. An agreement between husband and wife that he shall purchase real estate and take the title in her name in fee simple, and that she shall afterwards execute her will devising it to him after her death, will be sustained in equity, when the real estate has been purchased by him with his money and the title conveyed to her.
2. Under such an agreement the plaintiff purchased real estate and had the title conveyed to his wife, and she thereupon executed her will, devising *her estate* to her husband, the plaintiff. Both of them believed that the will conveyed to him any after acquired real estate. Subsequent to the date of the will the husband purchased other real estate with his money, and caused the title to be conveyed to his wife. The wife died without making any further will, and left a minor daughter surviving her.
3. On a bill by the husband praying that the contract between him and his wife should be carried into execution, and that the daughter should be held to be a trustee for him as to said last acquired real estate, it is held by the court that the husband is entitled to the relief prayed.

Meers. MORRIS & HAMILTON for plaintiff.

Mr. Justice COX delivered the opinion of the Court:

This case was submitted on a brief for one side. The case is of this description: Mr. Sherman filed a bill in the Equity Court setting forth that he had entered into an agreement with his wife that he should buy property, real estate, and take the title in her name in fee simple, and that she should afterwards execute her will devising it to him after her death; that he bought one piece of property and she executed her will devising *her estate* to him after her death, and subsequently he bought another piece which is the subject of this suit. Both he and his wife supposed that the will covered this after-acquired property, and she did not make a further will devising it to him, but died intestate as to the newly acquired piece, whereby it descended to her daughter, who was a minor. The complainant filed his bill asking that the contract entered into by him and his wife should be carried into execution, and the daughter held to be a trustee for him as to this property. The court, at Special Term, granted the relief prayed, after testimony had been taken and the minor had appeared by guardian ad litem, etc. Then he undertook to sell the property, and the Real Estate Title Company raised the objection that the court had no jurisdiction to pass that decree. In the brief of the complainant it is said that when

"Mr. Sherman attempted to sell the property, another self-constituted tribunal, one of the real estate title companies of the District, overruled the decision of the Equity Court, held that the decree was beyond the jurisdiction of the court to render, decreed that the property was the property of a minor which could only be sold under the Act of Congress of March 3, 1841 (5 Stat., 621), or under the the Act of Maryland of 1798, if necessary for the support of the minor, and thereby defeated a sale of the property that had been effected." As the father had had the decree passed at the Special Term in his favor, he could not appeal from that in order to get the question to the General Term. This bill was thereupon filed in the name of the minor by her next friend. The complainant says that he had only one of two things to do, to meet the difficulty. One was to bring an action for slander of title, and the other was to file this bill of review in the minor's name to set aside that verdict on the ground that the court had no jurisdiction to pass it. And thereupon the justice at Special Term certified the case to this court to be heard here in the first instance.

Now, the position of the Real Estate Title Company was erroneous, because the bill was not filed to sell an infant's property, but, on the contrary, it was filed on the very ground that in equity it was not the property of the infant, but to be treated as if the property had descended to the infant *in trust for the father*. Upon a review of the original cause, the court, however, would not be confined to the question of jurisdiction, but any error of law in the proceeding would be ground for setting aside the original decree. Now, assuming that the court then had jurisdiction, was there any error in the court's decree? There is no doubt that such a contract as the bill sets up would be null and void at common law, and it would not be aided by the Married Woman's Act in force in this District, because it is a contract not in relation to the separate property of the wife at all, but a contract as to future property, and that future property was to be acquired by her from her husband. But courts of equity recognize the capacity of man and wife to contract with each other, and will sustain certain contracts, if made for a valuable consideration, appearing to be for the mutual benefit of the parties. Just how far they will go is not perhaps defined altogether by any well ascertained limits; but Judge Story refers to a case very much like the present, in principle, viz., *Livingston v. Livingston*, reported in 2 Johnson's Chancery Re-

ports, 537. In that case "the plaintiff in May, 1809, married Eliza Oothout, who was seized in fee in her own right of a house and lot (No. 56) in Greenwich street. After the marriage, the plaintiff expended \$2,500 in repairs and improvements on the house. In April, 1814, the plaintiff and his wife agreed that he should purchase, in her name, another lot, and build a house thereon, and that the cost of erecting such new house should be paid out of the proceeds of the house and lot first mentioned, on a sale thereof for that purpose, to be made when the new house was completed." The only difference between that and this case was that that was a contract with the wife in reference to property that she already owned, and the present one is in reference to property that she was to own. "The bill stated that, in pursuance of this agreement," "the plaintiff bought another lot for \$6,000, which he paid for out of his own money" and took a deed in his wife's name; that he erected a house on the lot, in the building of which he expended above \$16,000 of his own money; that in September, 1815, he and his wife went to reside in the new house, and his wife, soon after, on the 21st day of the same month, died suddenly while the plaintiff, with her concurrence, was in treaty for the sale of the first house and lot; that the wife of the plaintiff left two infant children, her heirs, and to whom the legal estate in both houses and lots descended. The plaintiff alleged that the consideration for the agreement between him and his wife having thus failed, he was entitled to avoid the agreement, and consider the children as trustees for the plaintiff in regard to the second house and lot.

The bill prayed that the defendants might be decreed to release the last-mentioned house and lot to him, or that the same might be sold, and he be reimbursed the moneys he had so advanced, out of the proceeds of such sale."

Now, Chancellor Kent says: "I entertain no doubt of the fairness and equity of the agreement between plaintiff and his late wife, as stated in the bill and proved by one of the witnesses. A husband and wife may contract, for a bona fide and valuable consideration, for a transfer of property from him to her. It was admitted as a clear point in the case of *Lady Arundell v. Phipps* (10 Ves., 146-149), that a married woman, having separate property, may purchase, by the sale of it, other property, even of her husband, and have it limited to her separate use. Other authorities to the same point are referred to by *Atherly* (Mar. Sett., pp. 160, 161), who considers the point supported by reason as well as by

authority. Though the agreement here was parol, yet it was carried into effect on the part of the plaintiff, and he has the clearest equity either to have the house and lot first mentioned sold, and the proceeds, or a part of them, paid over to him, or to have the second house and lot conveyed to him, on the ground of a failure of the contract by the sudden death of his wife. If there had been no issue between them, the hardship to the plaintiff would have been more striking in suffering the property in both lots to pass immediately to the wife's collateral relations, but the principle of equity would not have been different. The circumstance that the heirs of the wife are the children of the plaintiff only gives a graver and more interesting character to the case. The presumption would undoubtedly be, in the first instance, that the conveyance to the wife was intended as an advancement and provision for her. This presumption was admitted in the case of *Kingsdon v. Bridges*, 2 Vern., 67, but I do not see why it may not be rebutted, as has been done in this case, by parol proof. In *Finch v. Finch*, 15 Ves., 48, it was held that though, when a purchase is made in the name of a person who does not pay the purchase money, the party paying it is considered in equity as entitled, yet if the person whose name is used be a child of the purchaser, it is, *prima facie*, an advancement, but that it was competent for the father to show by proof, that he did not intend advancement, but used the name of his child only as a trustee. If the agreement had here been for an exchange of lots, I might have thus ordered the infant heirs of the wife to convey to the plaintiff the house and lot first mentioned, considering them as infant trustees, according to the case of *Smith v. Hibbard*, Dick., 730. But the agreement was that the first house and lot should be sold, and the plaintiff reimbursed out of the proceeds for 'the expense of erecting such new houses.'

Without reading the whole decision, which goes on to say that not only was that contract one fair in itself and proper to enforce, but that "it was more beneficial to the infants to have this agreement specifically executed, than to have the new house and lot conveyed to the plaintiff," we hold that there was no error in the decree in the present case, and, furthermore, as in the case I have referred to, we hold that the ruling of the court as to a constructive trust, in the case referred to is plainly applicable to the present case. The husband bought the property, took the title in his wife's name, paid the whole money, and under an agreement between them he was to have the property after his wife's

death. We do not see any error in the decree at special term, and the bill of review, therefore, must be dismissed.

Circuit Court Northern District of Georgia.

GROSS

v.

GEORGE W. SCOTT MANUF'G CO. ET AL.

1. ACTION TO SET ASIDE DEED—Want of Equity—Demurrer.—A bill to compel defendants to reconvey to plaintiff land which formerly belonged to him is not demurrable for want of equity from the mere fact that it shows that plaintiff conveyed the land to C, who then conveyed to defendants, where plaintiff seeks relief on the ground that defendants secretly employed and paid C to purchase the land, knowing at the time that he was plaintiff's agent to sell, and that plaintiff relied on him for information and advice as to the value of the land.
2. SAME—False Representations.—The bill alleged that the land was of great value for the phosphate therein; that defendants stated to C that they did not want to buy the land for phosphate purposes, which statement C repeated to plaintiff; and that defendants knew this statement was not true, but their object in making it was to deceive plaintiff as to the true value of the land. Held, that these allegations are sufficient, as against a demurrer, to show that defendant knew of C's statements to plaintiff, and caused them to be made.
3. SAME—Diligence in Bringing Suit.—There is no lack of diligence shown on plaintiff's part when the bill alleges that those transactions did not come to his knowledge until October, and the suit is brought in November.
4. SAME.—Tender—Excusing Failure.—Failure to allege tender of the purchase money before suit is not fatal to such bill, where it does allege that tender was not made because plaintiff believed it would be unavailing, and that he is ready to repay the money with interest upon the execution of a deed to him by defendants.
5. PARTIES—Non-joinder—Inhabitants of another District.—The bill is not demurrable for nonjoinder of the agent, C, who is a resident of a different district from defendants. Rev. Stat., Sec. 737, provides that nonjoinder of parties who are not inhabitants of nor found within the district shall not constitute matter of abatement, though the judgment rendered shall not conclude them, and Equity Rule 47 authorized the court to proceed without parties, otherwise necessary, who cannot be joined because they are out of the jurisdiction of the court.

In Equity. Decided July 6, 1891.

BILL by Charles H. Gross against the George W. Scott Manufacturing Company and the De Soto Phosphate Mining Company to compel a reconveyance of land.

Mr. Justice NEWMAN delivered the opinion of the Court:

The case made by the bill is substantially as follows:

Charles H. Gross, complainant, is a citizen of the State of Pennsylvania. The George W. Scott Manufacturing Company and the De Soto Phosphate Mining Company, defendants, are corporations organized and existing under the laws of the State of Georgia, and citizens of that

State. That complainant was in October, 1889, the owner of certain lands on Peace River, in the State of Florida. That one John Gross, a resident of the State of Florida, had been continuously for several years prior thereto, and was at that time, complainant's agent to protect and make sales of said lands; under a general contract he received 10 per cent. of the proceeds of the sales, when other terms were not specially agreed upon; and that complainant relied upon said Cross in these respects. That about the 7th day of October, 1889, Cross came to Philadelphia, where complainant resided, and stated that the Scott Manufacturing Company desired to buy lands from complainant, and offered \$2.50 per acre for the same. Complainant inquired if there were phosphates on said lands, but Cross represented that the Scott Manufacturing Company desired the lands for other purposes. Complainant, having been accustomed and obliged to rely upon his agent for information in regard to said lands, and, on the faith of his representations, contracted to sell the same at \$2.50 per acre. Thereupon, at Cross' direction, complainant made him a deed to the lands, received his check for the purchase price, and paid Cross 10 per cent. of the amount as commission. The inquiry complainant made of Cross was material and important, and upon the existence or non existence in said lands of phosphates depended in a large degree their value. That prior to this sale phosphates had been discovered on lands on Peace River of a very valuable character, which was well known to Cross and to defendants. Complainant did not know until six months after the sale that the lands contained any phosphates, and complainant avers said lands were rich in phosphates, and were worth from \$25 to \$100 per acre at the time of the sale, and some of the land worth over \$100 per acre. That the George W. Scott Manufacturing Company, through its president, George W. Scott, and other officers, had before the said sale employed Cross to purchase said lands of complainant under contract to pay him for his services and expenses while attending to the same, and that said company did pay Cross' expenses from Florida to Philadelphia, and compensation in money, while engaged in negotiating the purchase. That said company knew that Cross was complainant's agent to sell the land, and that complainant relied upon him as such, and for information concerning the value of the lands. Complainant did not know until October, 1890, of this arrangement between Cross and defendant. That the Scott Company engaged the services

of Cross for the purpose and with the intent of influencing him to act in its interest, and to disregard his duties to complainant, and such was its effect. On the 12th day of October, 1889, Cross made the Scott Manufacturing Company a deed to certain lands, embracing a part of the land conveyed by complainant to Cross, and on the 13th day of November, 1889, made a deed to said company to certain lands, including the remainder of the land conveyed by defendant to Cross, and on November 21 the Scott Manufacturing Company conveyed to the De Soto Phosphate Company part of the land conveyed by complainant to Cross (which is described, but is immaterial here.) The two defendant corporations are composed, substantially, of the same members and stockholders. That the directors and other officers are substantially the same persons. The phosphate company had been for a year before 1889 mining phosphates on Peace River and vicinity. The Scott Manufacturing Company had been for some years manufacturing fertilizers in Atlanta, Ga. That the two companies are, in interest, the same, though separate corporations. That the phosphate company knew that Cross was complainant's agent, as stated, when the Scott Company employed him, and knew of the fraud on complainant, and acquired its interest with a knowledge of such fraud.

Long before October, 1889, defendants' officers and agents had been examining lands on Peace River, and purchasing phosphate lands for their purposes, or to sell. Before Cross' visit to Philadelphia, the president of the manufacturing company, or some other officer, gave Cross a description of complainant's land which the company wished to purchase, and secretly employed Cross to purchase the same as low as he could. The defendants and Cross knew before they bought the land that they contained phosphates, and that their actual market value was many times greater than the amount paid therefor. When Cross was employed by defendants, as stated, their officers and agents represented to Cross that they wanted the land to control the use of the river, and for other purposes, and did not want them for phosphates; which statements were false in fact, and made to deceive complainant, and conceal from him the value of the land; and complainant was deceived, and, relying upon Cross, made no further inquiry. That the legal title of said land is still in the defendants. That complainant is ready and willing to pay the defendant, the George W. Scott Manufacturing Company the amount paid complainant for the lands, with

interest thereon, with the execution and delivery of the deed to complainant, and complainant would have made tender thereof to said company before filing this bill but for the belief and conviction that such tender would not have been accepted. Complainant tenders in the bill to the defendants the full amount of purchase money received for the land from Cross, with legal interest thereon, and offers to pay the same in any manner or time that the court may decree, upon reconveyance of the land unencumbered, in the same or in as good condition as when conveyed to defendants. Discovery is waived except as to fourteen interrogatories which were propounded to the defendants. The prayer is for an order and decree that the defendants convey, by good and sufficient deeds of conveyance, the lands described, and for an account of all the phosphates and phosphate ores, if any, taken from said lands, and for damages, if any, to the land, and for such other and further relief as to the court may seem just to make. There is also prayer for injunction, which has not been insisted upon. The demurrer is upon two grounds: First, that there is no equity in the bill; second, that John Cross is a necessary party to the bill. The first ground of the demurrer, that there is no equity in the bill, is subdivided in the argument, and in the brief filed by counsel, and urged, upon four grounds:

"First, because it appears from the bill that complainant dealt with and conveyed the land to Cross, and did not deal with or convey to defendants. Nor is it alleged that defendant companies, or either of them, knew of any of the representations Cross made to complainant."

The whole case made by complainant in this bill is grounded upon the facts that the defendants secretly employed Cross as their agent, and paid him as such, to purchase the land, knowing at the time that he was the agent for complainant to sell the land, and that complainant relied on him for information and advice as to the value of the land and the price of the same. The fact, therefore, that complainant conveyed the land to Cross would seem to be immaterial, in view of the general allegations of the bill and the other facts set up. As to the position that it is not alleged that defendants knew of Cross' representations to complainant, the allegation in the bill is that defendants stated to Cross "that they did not want to buy the lands aforesaid for the phosphate that was on them, or for phosphate purposes;" and then "that said Cross repeated said statements and representations, in substance, to complainant," and, further, "that defendants knew they were

not true, and that the principal object of defendants in making such statements and representations was to mislead and deceive your orator, and to conceal from him the true value of this said land." It would seem from this that the defendants not only knew of the representations made by Cross to complainants, but caused them to be made.

It is next insisted that—

"There is no allegation of fraud on the part of defendants in procuring title to them, or either of them, but that they procured title to be made to Cross. Where relief is asked on the ground of fraud, the bill must state the case with certainty and definiteness. It must allege specific acts and language. A general charge of fraud is insufficient, nor is it enough that fraud might be inferred."

I think this subdivision of the first ground of the demurrer has really been disposed of in what has just been said, and need not be repeated here. The allegations seem to be sufficiently specific and definite. All the acts complained of seem to be fully set out, and, as said before, the basis of the case made for relief is that the Scott Manufacturing Company employed Cross as its agent, knowing at the time that he was the complainant's agent, and influenced him to disregard his duty to complainant.

It is said next that no diligence is shown by complainant to protect his rights. The statement in the bill on that subject is that—

"Orator avers that it did not come to his knowledge until six months after the execution and delivery of the deed [alluding to the deed made by complainant to Cross] that the land thereby conveyed contained any phosphate."

And afterwards in the bill—

"That orator avers that he did not know until the early part of October, 1890, that said John Cross had received, or had agreed to receive, from said company, its officers or agents, any compensation for his services rendered in buying said land, or his expenses while attending thereto, or was otherwise in the employ of said company, its officers or agents, to perform service to it or them inconsistent with his duties as your orator's agent."

The bill was filed November 3, 1890; so that, certainly, no lack of diligence is apparent.

Further objection urged to the bill is that it does not allege tender of the purchase of land. The statement in the bill on this subject is as follows:

"Your orator avers that he is ready and willing to pay to the defendant, the manufacturing com-

pany, the consideration money paid your orator for said lands, with interest thereon, upon the execution and delivery of a deed of conveyance thereof to your orator, and avers that he would have made a tender thereof to said company before filing this bill but for the belief and conviction that such tender would not have been accepted. And your orator hereby tenders to the defendants the full amount of purchase money aforesaid, received for said lands from the said Cross, with legal interest thereon, and hereby offers to pay the same in such a manner and at such times as this honorable court may decree, upon the reconveyance thereof to your orator, unencumbered, and in the same or as good condition as when they were conveyed to the defendants, and to abide by such other conditions as this honorable court may deem just and equitable."

It would seem that complainant offers to do equity, and to repay the purchase money of the land with interest. If complainant should, on the final hearing, appear to be entitled to the decree, this matter can be fully controlled, and full justice done to defendants, in this respect, in the decree and judgment of the court. I do not understand the rule to be that tender back of the purchase money in a case like this is absolutely essential for maintaining either a bill in equity or proceeding at law. It is a matter that is controlled very largely by the circumstances of the case; and I would be unwilling in this case to turn the complainant out of court for lack of a former tender, when all the rights he may have in that respect can be fully protected, and his claim for a repayment allowed in ample measure.

The second ground for demurrer, namely, that John Cross is a necessary party to the bill, seems to be controlled by the statute, the equity rule, and the decisions on the subject. The bill states that John Cross, at the time of the transaction referred to in the bill, resided in the State of Florida, and it is to be presumed that he still resides there. Section 737, Rev. Stat. U. S., is as follows:

"When there are several defendants in any suit at law or in equity, and one or more of them are neither inhabitants of nor found within the district in which the suit is brought, and do not voluntarily appear, the court may entertain jurisdiction, and proceed to the trial and adjudication of the suit between the parties who are properly before it; but the judgment or decree rendered therein shall not conclude or prejudice other parties not regularly served with process nor voluntarily appearing to answer; and non-

joinder of parties who are not inhabitants of nor found within the district, as aforesaid, shall not constitute matter of abatement or objection to the suit."

Equity Rule 47 is as follows:

"In all cases where it shall appear to the court that persons, who might otherwise be deemed necessary or proper parties to the suit, cannot be made parties by reason of their being out of the jurisdiction of the court, or incapable otherwise of being made parties, or because their joinder would oust the jurisdiction of the court as to the parties before the court, the court may, in their discretion, proceed in the cause without making such persons parties; and in such case the decree shall be without prejudice to the rights of the absent parties."

There are three classes of parties to a bill in equity: First, merely formal, although proper, parties; second, those having an interest in the controversy, and whose interest and absence from the bill being called to the attention of the court, it will require to be made parties before deciding the case, if within its jurisdiction, but if not within its jurisdiction, the court will administer such relief as may be in its power between the parties before it; third, indispensable parties, without whom the court will not proceed with the case at all. *Shields v. Barrow*, 17 How., 130; *Barney v. Baltimore City*, 6 Wall., 284.

The prayer of the bill in this case, as has been stated, is for a reconveyance by defendants to complainant of the land in controversy, and for an account of phosphates, if any, taken from, or damages to, the land. Now, can the right of complainant to have this decree be determined without Cross as a party? According to the bill, the deed made by complainant to Cross, and by Cross to defendant, was merely formal, and for convenience in getting the title into defendants. While it seems he would be a proper party, the court is not prepared to say that his presence is indispensable to granting the relief prayed for. It appears that Cross acted only as an intermediary between complainant and defendant, and that the real substantial issue is between the present parties to the bill. Conforming to the statute and equity rule above quoted, and to the decisions of the Supreme Court on the subject, this is a case in which the court should proceed with the parties before it, and the demurrer on this last ground cannot be sustained: *Fos. Fed. Pr.*, Sec. 50; see, also, *Conolly v. Wells*, 33 Fed. Rep., 205, in which the decisions of the Supreme Court on the subject are collated.

The demurrer in this case will be overruled.

Law Blanks at the Law Reporter 503,

Supreme Court of Indiana.

SUMNER ET AL., APPELLANTS,
v.

WILLIAM J. DARNELL.

1. A deed to certain persons "Commissioners of W. County, and their successors in office for the use of said county," accepted by an entry upon the county records as a deed "to and for the use of" said county, gives the legal title to the county and not the commissioners, where there was no statute designating their corporate name and style.
2. Removal of a county seat, fifty-six years after its location on land conveyed for such use, does not make a total failure of the consideration which will cause a reversion to the grantor.
3. A conveyance "for the use of" a county "in consideration of the seat of justice having been permanently established" at a certain place, is not on a condition subsequent that the county seat remain there, and no reversion is worked by removal of the county seat.

Decided April 8, 1891.

APPEAL by plaintiffs from a judgment of the Circuit Court for Wayne County in favor of defendant in an action brought to recover possession of certain real estate. *Affirmed.*

THE FACTS are stated in the opinion.

Mr. Justice MILLER delivered the opinion of the Court:

This was an action by the appellants against the appellee to recover certain real estate in Centerville, Wayne County. The complaint was in four paragraphs. A demurrer was sustained to the second paragraph, and cause put at issue by answer in denial. The errors assigned in this court relate only to the overruling of a motion made by the appellants for a new trial, and on exceptions to the conclusions of law upon the special findings of fact. The motion for a new trial was predicated upon the alleged insufficiency of the evidence to sustain the finding. We have read the evidence carefully, and find that it fully and without conflict sustains the finding of facts made by the court. The special finding, omitting description of real estate, is as follows, viz.: "Having been requested by the plaintiffs in said cause to make a special finding of facts herein, and conclusions of law thereon, now find: That William Sumner was a resident of Centerville, Wayne County, Ind., from the year 1813 to the year 1840, at which last-named date he removed to Hamilton County, Ind., where he died intestate in the year 1868; that he left surviving him as his sole heirs four children, the plaintiffs in this suit, and Thomas Sumner, who died in 1883, leaving, surviving him, — Sumner, his wife; that between the years 1813 and 1820 the said William Sumner was the owner in fee simple of — acres

of real estate in town of Centerville, and in the vicinity thereof, and was interested in the development of the town; that prior to the year 1816 the county seat of said Wayne County was fixed at Salesbury, and subsequently, by an Act of the General Assembly of the State of Indiana, approved December 21, 1811, it was enacted that, from and after the 1st day of August, 1817, the seat of justice in and for said county should be removed to and permanently fixed in the town of Centerville, in said county, and on the 1st day of August, 1817, said seat of justice was, pursuant to said act, removed to said town of Centerville; that afterwards, to wit, on the 18th day of May, 1819, the said William Sumner being the owner of the following real estate, to wit, * * * did, in consideration of the seat of justice having been permanently established in the town of Centreville, within and for said county, and for no other consideration, execute to Thomas J. Warman, Enos Grave, and Beah Butler, the commissioners of said county and their successors in office, for the use of said county forever, a warranty deed for the same; that said deed was duly recorded on the 18th day of May, 1819, in the recorder's office of said Wayne County, Ind., in Deed Record B, page 140; that on the — day of August, 1820, the new court house at Centerville was completed and accepted by the said county commissioners of said county, and by them taken possession of, and on said date they consented to be entered their approval and acceptance of the deed of said William Sumner of May 18, 1819, in the record of their proceeding of said date, in the following words, to wit: 'William Sumner produced a deed for the public square, in the town of Centerville, given by said Sumner and wife to and for the use of Wayne County, which deed was recorded in Book B, page 140, which deed was approved and accepted by the board.' That said real estate so conveyed by the said Sumner and wife to said county commissioners was thenceforward continuously used by said county for the purpose of a public square until the year 1873, at which date the county seat was removed from said town of Centerville to the city of Richmond; that on the 7th day of March, 1874, the commissioners of said county, for a valuable consideration, sold and conveyed the west half of the same to one Sabra Jones, which deed was recorded in the recorder's office of Wayne County, Ind., in Deed Record 59, page 480, and on the 15th day of June, 1874, for a valuable consideration, they sold and conveyed the east half of the real estate to the said Sabra Jones, which deed was recorded in the recorder's office

of Wayne County, Ind., in Deed Record 59, page 478; that said Sabra Jones took possession of said real estate on said dates, respectively, and that, after various transfers by deeds duly executed and recorded, the following part of the real estate included in the land conveyed by said William Sumner to the said county commissioners by deed of May 18, 1819, was conveyed on the 4th day of March, 1884, to defendant William J. Darnell, who now holds possession of the same; that said deed was duly recorded in the recorder's office of said Wayne County, Ind., in Deed Record No. 80, at page 121; that prior to the commencement of this suit the plaintiffs demanded of the defendant the possession of the same." And, as a conclusion of law on the foregoing finding of facts, the court finds for the defendant. Proper exceptions were taken to the foregoing conclusions of law by the plaintiff, and this presents for our consideration the question discussed by council in their elaborate briefs.

The conclusions of law deduced by the court from the special findings are assailed upon several different grounds, one of which is the claim that, inasmuch as the deed was to "Thomas J. Worman, Enos Grave, and Beah Butler, commissioners of Wayne County, and their successors in office, for the use of said County of Wayne," it gave to the commissioners the legal title to hold as trustees, and limited the county to the mere use of the premises; and that by the removal of the county seat the use was lost and forfeited, and the title vested *eo instante* in the grantor or his heirs. As we construe the grant, it was in legal effect and contemplation a conveyance to the county. Nothing in the language used indicates a design on the part of the grantor to vest the legal title in the commissioners and their successors as individuals, to act as trustees, rather than as the agents of the county, or to impose upon them any duties or obligations other than those required of them as public officers. The statute in force at that time did not, as does the present one, designate the corporate name and style to be assumed by boards of commissioners (Act approved December 17, 1816), and the form used in this deed was at that time commonly used in conveying property to corporations and quasi corporations in this State. It is significant, also, that the entry made upon the county records by the board of commissioners in accepting the deed was for a deed "to and for the use of Wayne County." See also Carter v. Fayette County Comrs., 16 Ohio St., 353; Hayward v. Davidson, 41 Ind., 212. Another position taken by the appellants is

stated in their brief as follows: "But this is not all we rely upon. The total failure of the consideration of the Sumner deed itself worked a loss of the county's claim, and gave the Sumner heirs the right to assert their title to the square, independent of the condition subsequent." No authority is cited in support of this position, and we know of none that will sustain it. The duration or stability of the title to land does not ordinarily depend upon the certainty or stability of the consideration paid for it. But, independently of the legal question involved, the finding informs us that the county seat remained at Centerville, from the 1st day of August, 1817, until the year 1873, long after the grantor had removed from the county. We may reasonably suppose that, if the county seat at Centerville was of advantage to the grantor, he must have received some of the benefits during the half century it remained there, and that consequently there was not an entire failure of consideration. *Hunt v. Beeson*, 18 Ind., 380; *Jeffersonville, M. & I. R. Co. v. Barbour*, 89 Ind., 375.

The remaining and principal contention of the appellants is that the conveyance of the land to or for the use of the county was conditioned in the seat of justice of Wayne County remaining permanently at Centerville, and that its removal to Richmond caused the land to revert to the appellants as the heirs of the grantor. The rule of strict construction applicable to conditions subsequent, usually expressed in the words, "conditions subsequent are not favored in law, and are construed strictly," is elementary, and does not require the citation of authorities. A condition subsequent that will defeat an estate created by a deed must be fairly expressed in the deed itself. The words used must create the condition. The court will not supply it, if the parties fail to express it. The rule is stated in 2 *Devlin on Deeds*, as follows: "Sec. 976, Parol condition. Aside from the question of a reformation of a deed in cases where clauses have been omitted by mistake, it is certain that, in an action to recover property conveyed by deed on the ground that a condition on which it was made has not been performed, the deed must speak for itself, and a condition cannot be ingrafted upon a deed absolute in form by parol evidence. The ingrafting of a contemporaneous condition in a deed will, in a proper action, be allowed only on clear evidence of fraud, accident, or mistake." A condition may be created by any words which show clear, unmistakable intention on the part of a grantor to create an estate on condition, regard being had

to the whole of the deed in which they occur. The word "condition" need not be used, but words importing a condition must be used or plainly inferred from the instrument and the existing facts. *Tiedeman, Real Prop.*, § 272; *Laberee v. Carleton*, 53 Me., 213; *Rawson v. Uxbridge School Dist. No. 5*, 7 Allen, 125; *Packard v. Ames*, 16 Gray, 327; *Episcopal City Mission v. Appleton*, 117 Mass., 327; *Paschall v. Passmore*, 15 Pa., 307; *Wier v. Simmons*, 55 Wis., 642; *Raley v. County of Umatilla*, 15 Or., 172; 2 *Washb. Real Prop.*, 5th ed., 2. It appears from the finding, supra, that in the year 1816 the General Assembly passed an act fixing the seat of justice for Wayne County permanently at Centerville from and after the 1st day of August, 1817, and that pursuant to the act, on that day, it was removed to Centerville; that afterwards, on the 18th day of May, 1819, the lands in controversy were conveyed by a general warranty deed to the commissioners "for and in consideration of the seat of justice having been permanently established in the town of Centerville, within and for said county, * * * for the use of said County of Wayne." No other words, from which any condition, limitation, or right of re-entry by the grantor or his heirs can be inferred are expressed in the conveyance, or in the subsequent entry made by the board of commissioners accepting the deed. The cases cited by appellants' attorneys, and principally relied upon to show that this deed was conditioned on the seat of justice remaining at Centerville, will be examined in their order. The first one is *Stanley v. Colt*, 72 U. S., 5 Wall., 119-163, 18 L. ed., 502, 508. This was an action to recover, for breach of condition, a tract of land devised by the plaintiff's ancestor to an ecclesiastical society in which the property was devised to the society, "to be and remain to the use and benefit of said Second or South Society, and their successors, forever." Then comes the condition or limitation upon the devise: "Provided, that said real estate be not ever hereafter sold or disposed of, but the same be leased or let," etc. The court held that there was not a condition subsequent, using these words: "Our conclusion is that the construction urged by the plaintiff of the will, importing a condition, a breach of which forfeits the devise, is not well founded." The next case cited is *Hunt v. Beeson*, 18 Ind., 380. In this case a lot was donated by the proprietor of a town for a "tan-yard;" and was used as such from 1834 to 1858. The court held that it was donated upon a condition subsequent, the condition evidently being the erection of a tan-yard on the lot, and not the perpetual main-

tenance of the same; for the court held that the condition was fully performed, and that the property did not revert upon its subsequent sale and appropriation to other purposes. The case of Indianapolis, P. & C. R. Co. v. Hood, 68 Ind., 580, was a conveyance of some lots to the company "for a site for the depot of said railroad at Peru, * * * to have and hold the premises * * * for the purposes aforesaid." The statement of the use and condition was much stronger than is contained in the deed under consideration, and it does not support the position of the appellants. We do not feel called upon to extend the rule in favor of conditions subsequent beyond that indicated in this case. The case of Scott v. Stipe, 12 Ind., 74, is not well reported, but as explained in Scantlin v. Garvin, 46 Ind., 275, does not sustain the appellants' contention; for it is said that the grant was upon condition that a church should be erected on the lot, and that it should "forever thereafter be used as a house of worship." Also see Cook v. Leggett, 88 Ind., 211. The case of Warren v. Lyon City, 22 Iowa, 351, was a suit by the grantor, who dedicated land for a "public square," to enjoin the city from leasing or selling the same. The case is not in point. In Henderson v. Hunter, 59 Pa., 335, the condition expressed in the grant to a church was, "so long as they use it for that purpose, and no longer, and then to return back to the original owner."

We are unable to find that any of the cases cited by appellants sustain their theory of this case. In Heaston v. Randolph County Comrs., 20 Ind., 398, the conveyance was to "the board of trustees of the county seminary of Randolph County, and their successors in office, forever, to have and to hold the premises aforesaid, with all the appurtenances, to the only proper use, benefit, and behoof of said 'board of trustees, for the use of said seminary forever.'" It was claimed that this created a condition subsequent, and that, the premises having ceased to be used as a seminary, the grantor was to receive the land. The court held that the corporation received an unconditional title, which was not defeated by the alleged failure to use the premises for the purposes of a seminary, or by using them for other purposes, that there was nothing in the deed that imports a condition; and that if the grantor intended that the property conveyed should only be used for a seminary edifice, or, in case it should be used otherwise, that the estate should be forfeited and revert, the condition should have been expressed or fairly implied. In Seibold v. Shilter, 34 Pa., 133, land upon which a court-house and jail had been

erected was conveyed to the commissioners by name, and their successors in office, "in trust for the use of the said county, in fee simple." The county was subsequently divided, the seat of justice removed, and trustees appointed to sell the lots. Held, that there was no reverter. In Adams v. County of Logan, 11 Ill., 336, a landowner proposed that, if the county-seat should be located at Pottsville, he would give land for a court-house and other purposes. The proposition was accepted, and the General Assembly passed "An Act to locate permanently the seat of justice of Logan County," and it was located at Pottsville. Subsequently the county seat was removed. It was held that the grantor was without remedy. The suit was to recover the money rather than the land, but it was held that the deed was unconditional. In Harris v. Shaw, 13 Ill., 456, land was conveyed to commissioners, by name, and their successors in office, for the use of a county forever, in consideration of one dollar, and that the county seat had been located on the premises. The county seat was afterwards removed, and the grantor sued to recover the land. It was held that there was no condition, and that he could not recover. The citation of authorities to this effect might be greatly extended, but we will refer to the following: Raley v. County of Umatilla, 15 Or., 172; Portland v. Terwilliger, 16 Or., 465; Coffin v. Portland, 16 Or., 77; Columbia First M. E. Church v. Old Columbia Pub. G. Co., 103 Pa., 608; Paschall v. Passmore, 15 Pa., 307; Rawson v. Uxbridge School Dist., No. 5, 7 Allen, 125; Packard v. Ames, 16 Gray, 327; Crane v. Hyde Park, 135 Mass., 147; Sohier v. Trinity Church, 109 Mass., 1; Board of Sudrs. v. Patterson, 56 Ill., 111; Lawe v. Hyde, 39 Wis., 347; Wier v. Simmons, 25 Wis., 637; Brown v. Caldwell, 23 W. Va., 187; Southard v. Central RR. Co., 28 N. J. L., 14; Barrie v. Smith, 47 Mich., 131; Gage v. School Dist. No. 7, 64 N. H., 232, 4 New Eng. Rep., 284; Page v. Palmer, 48 N. H., 387; Morrill v. Wabash, St. L. & P. RR. Co., 96 Mo., 174; Thornton v. Trammell, 39 Ga., 202.

It is questionable whether the appellants would be entitled to a recovery if the deed contained a condition subsequent. It appears from the finding that the county seat remained at Centerville from 1817 to 1873, a period of fifty-six years, and that this suit was brought more than seventy years after the location of the seat of justice at Centerville. It may fairly be presumed that the grantor at the time he executed the deed to the commissioners owned other property, the value of which he expected would

be enhanced by the location of the county seat, or that he had other interests to be subserved thereby. If so, we may also infer that he received during his lifetime, and while a resident of Wayne County, the substantial benefit of his donation. In *Hunt v. Beeson*, 18 Ind., 380, it was held that the maintenance of a tan-yard for the period of twenty-four years was a substantial compliance with the condition contained in the conveyance. In *Mead v. Ballard*, 74 U. S., 7 Wall., 290, 19 L. ed., 190, a conveyance, upon condition that an institute "shall be permanently located upon said lands," was complied with by the location of the institution thereon August 9, 1848, and its remaining there until 1857. In *Jeffersonville, M. & I. RR. Co. v. Barbour*, 89 Ind., 375, the use for thirty-three years of lands granted "expressly for the use and purpose of depot grounds," and providing that if not used for that purpose it should revert to the grantors, was held to be a performance of the condition, so as to prevent a forfeiture. We find no error in the record. Judgment affirmed.

JURIES—Competency of.—A person is not incompetent to sit as a juror in the trial of a defendant charged with maintaining a place for the sale of intoxicating liquors, because he is shown to be a member of an organization whose object is the "promotion of temperance among its members by moral suasion." *State v. Estlinbaum*, Supreme Court of Kansas, Nov. 7, 1891. 27 Pac. Rep., Vol. 27, 996.

INSURANCE—Policy in Favor of Children Non-collectible by Administrator where there are no Children Born.—Where an insurance company by its policy agrees "to pay the sum of the insurance to the children of the insured," and the person so insured died before any children are born, her administrator cannot recover the amount of the insurance. *McElwee v. New York Life Ins. Co.*; U. S. Ct. E. D. Mo., Oct. 28, 1891, 47 Fed. Rep., 798.

NEGOTIABLE SECURITIES—Pledges as Collateral.—While as a general rule a pledgee of negotiable securities as collateral security is not permitted in his dealings with the securities to accept from the parties bound in discharge of them anything less than their face value, yet where there is an agreement of all the parties to the securities, a compromise will be sustained. Therefore, where one of the two obligors, jointly indebted as principals, pledges certain choses in action as collateral security for the joint debt, the pledgee may, with the consent of the pledgor, accept less than the face value of such collateral in settlement of the same, without making himself liable to account to the other obligor for more than the sum actually received by him. *Foltz v. Hardin*, S. C. Ill., Oct. 31, 1891, 28 N. E. Rep., 786.

THE COURTS.

Supreme Court of the District of Columbia. IN EQUITY.—New Suits.

February 27, 1892.

13744. *W. B. Allison et al. v. Francis N. Higbee et al.* To administer trust. Com. sol., *Shellabarger & Wilson*.

February 29.

13745. *Chas. W. James v. Margaret J. James.* For divorce. Com. sol., *Howard P. Okie*.

13746. *J. D. Mankin v. G. A. Lane et al.* To enjoin interference with possession. Com. sol., *W. K. Duhamel*.

March 1.

13747. *Elizabeth Seal.* Alleged lunatic upon petition Commissioners D. C. De lunatico inquirendo. Com. sol., *Geo. C. Hazleton*.

13748. *Irving Lane.* Alleged lunatic, upon petition Commissioners D. C. De lunatico inquirendo. Com. sol., *Geo. C. Hazleton*.

13749. *James Talty et al. v. Mary Ellen Prince.* To cancel deed and for an accounting of rents. Com. sols., *J. J. Darlington and J. M. Wilson*.

13750. *Martha Bell Brewer v. George Mason.* For injunction. Com. sols., *Riddle & Davis*.

13751. *Mary Ellen Blue v. Samuel Blue.* For divorce. Com. sol., *C. Carrington*.

13752. *Thos. P. Keane et al. v. Jno. W. Harsha et al. and the Rochdale Co-operative Society incorporated.* Injunction. Com. sol., *A. S. Worthington*.

13753. *Samuel A. Gibson v. Mary E. Rosenbaum et al.* To enforce mechanics' lien. Com. sol., *A. B. Duvall*.

March 3.

13754. *Ulriecka Behrend.* Alleged lunatic, upon petition of *A. Behrend*. De lunatico inquirendo. Com. sol., *Lewis Abraham*.

13755. *Louis L. Scott v. Louisa Scott.* For divorce. Com. sol., *C. Carrington*.

13756. *Albert Ward et al. v. John B. Archer et al.* To enforce mechanics' lien. Lots 20 and 21; Hickeys sub. of original lot 5, sq. 686. Com. sol., *Thos. M. Fields*.

13757. *Julius Lansburgh v. Frank W. Heygester et al.* Judgment and creditors' bill. Com. sol., *Thos. M. Fields*.

13758. *Wm. J. Craigen et al. v. A. P. Clark, jr., et al.* For partition. Com. sol., *Leo Simmons*.

March 4.

13759. *Earnshaw & Bro. v. Geo. T. Shepherd et al.* Judgment and creditors bill. Com. sol., *Frank T. Browning*.

13760. *Margaret Baldwin v. Jno. W. Baldwin.* For divorce. Com. sol., *C. Carrington*.

March 5.

13761. *Mary B. Wilson v. Saml. C. Wilson.* For divorce. Com. sol., *C. Carrington*.

13762. *Geo. W. Hall,* alleged lunatic, upon petition of *W. W. Tillinghast*. De lunatico inquirendo.

March 7.

13763. R. H. Willett v. Henry Strong, to enforce mechanics' lien. Com. sol., Riddle & Davis.

13764. T. M. Elliott et al. v. Emily M. Webb et vir. et al. For partition. Com. sol., H. C. Davis.

13765. Wm. D. Nelson v. Ida E. Cole et al. For partition. Com. sol., W. H. Sholes.

13766. Nicholas Drummond v. Daniel Murray et al. For partition by sale. Com. sol., L. C. Williamson.

Legal Notices.**Rule of Court.**

RULE 20. * * * * * Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

FIRST INSERTION.**This is to Give Notice**

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters Testamentary on the personal estate of ANTHONY HYDE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of March, 1892.

TIOS. HYDE,
Care of Riggs & Co.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of JANE E. O. RHODES, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 5th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 5th day of March, 1892.

WILLIAM JOSEPH McCUALEY,
mark
10 James Hoban, Proctor. 1200 6th St., n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 5th day of March, 1892.**The Home for Aged Colored People**

vs. No. 13,584. Eq.
Ann L. Taney et al. Docket 33.

On motion of the plaintiff, by Mr. Irving Williamson, its solicitor, it is ordered that the defendants, ANN L. TANEY, JOSEPH A. TANEY, THOMAS H. WHITE, KATE WHITE, JOSEPH A. WHITE, SOPHIE WHITE, EDWARD H. WHITE, SUSAN WHITE, HARRY WHITE, M. JOSEPHINE WHITE, ROSA HARTMAN and J. A. HARTMAN, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to remove cloud from title to lots 2 and 3 in J. and G. W. Hopkin's subdivision of square 110, Washington, D. C., the said defendants being the heirs of Rev. Charles I. White, in whom the title to said lots was at one time vested.

This order to be published in the Washington Law Reporter once a week for three weeks prior to said rule-day.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.

10 | By M. A. Clancy, Asst. Clerk.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**
Holding a Special Term for Orphans' Court Business.

March 4th, 1892.

In the case of Robert Farnham, Administrator of JANE FARNHAM, ..deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 8th day of April, A. D. 1892, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
10 No. 4318. Ad. Doc. 16. Henry Wise Garnett, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

March 4th, 1892.

In the case of Chas. C. Glover and Jas. M. Johnston, Executors of GEORGE BANCROFT, deceased, the Executors aforesaid have, with the approval of the Court, appointed Friday, the 8th day of April A. D. 1892, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
10 No. 4257. Ad. Doc. 16.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

March 7th, 1892.

In the matter of the Estate of PHYLEND M. STODDER, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Lucina J. Mykel.

All persons interested are hereby notified to appear in this Court on Friday the 8th day of April next, at 1 o'clock p. m., to show cause why the said Will should not be proved and admitted to probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published in the Washington Law Reporter four times previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.

10 No. 4853. Ad. Doc. 17. Wm. W. Wright, Proctor.

SECOND INSERTION.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

The 2d day of March, 1892.

Ella T. Mulliken, plaintiff, vs. No. 13,586. In Eq. Doc. 33.
William L. Mulliken, defendant.

On motion of the plaintiff, by Mr. O. B. Hallan, her solicitor, it is ordered that the defendant, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce from the bond of marriage and restoration to her maiden name of Ella Trembley on the ground of two years' abandonment and desertion.

A. B. HAGNER, Asso. Justice.
A true copy. Test: J. R. Young, Clerk.

9 By M. A. Clancy, Asst. Clerk.

[Filed March 2, 1892. J. R. Young, Clerk.]

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters Testamentary on the personal estate of MICHAEL RODY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 24th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 24th day of February, 1892.

BRIDGET RODY,
No. 18 Mass. ave. n. e.

9 R. B. Lewis, Proctor.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters of Administration on the personal estate of ANN RAFFERTY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of February, 1892.

JULIA R. TRUMBULL,
Cr. Jas. G. Payne,
City Hall.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of THOMAS J. COFFEE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of February, 1892.

J. WILLIAM LEE,
No. 532 Pa. ave. n. w.

9 A. H. Bell and Geo. E. Johnson, Proctors.

This is to Give Notice

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of BENEDICT O. GREENWELL, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 25th day of February, 1892.

JOS. M. JOHANNES,
S. A. H. MCKIM,
25 5th St. s. e.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

February 26th, 1892.

In the matter of the Estate of JANE M. FRANKS, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Mary F. Wall.

All persons interested are hereby notified to appear in this Court on Friday, the 25th day of March next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court.

A. B. HAGNER, Justice.

Test:

L. P. WRIGHT,

Register of Wills for the District of Columbia.

9 No. 4547. Ad. Doc. 17. Randall Hagner, Proctor.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of HARRY J. RUDY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 27th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of February, 1892.

JOHN F. KELLY,
31 G St. n. w.

9 Albert Sillers, Proctor.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of ALBERT M. EVANS, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 24th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 24th day of February, 1892.

MARTIN L. LICHTY,
9 J. Bruce Webb & E. L. Schmidt, Proctors. 3219 P St.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

February 26, 1892.

In the matter of the Estate of MICHAEL BELCHER, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Thomas G. Addison, a creditor.

All persons interested are hereby notified to appear in this Court on Friday, the 25th day of March next, at 11 o'clock p. m., to show cause why Letters of Administration on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Washington Post previous to the said day.

By the Court.

A. B. HAGNER, Justice.

L. P. WRIGHT,

Register of Wills for the District of Columbia.

9 No. 4850. Ad. D. 17. Waters & Taylor, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

February 26th, 1892.

In the matter of the estate of ALBERT BOULDON, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased, has this day been made by George R. Williams.

All persons interested are hereby notified to appear in this Court on Friday, the 25th day of March next, at 11 o'clock a. m., to show cause why Letters of Administration on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court.

A. B. HAGNER, Justice.

L. P. WRIGHT,

Register of Wills for the District of Columbia.

9 No. 4855. Ad. Doc. 17. W. K. Duhamel, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 29th day of February, 1892.

Ada Hazlerigg
v.
Oliver Hazlerigg } No. 13,388. Eq. Docket 32.

On motion of the plaintiff, by Mr. H. B. Moulton, her solicitor, it is ordered that the defendant, OLIVER HAZLETRIGG, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain an absolute divorce from the defendant on the ground of desertion and abandonment.

By the Court.

A. B. HAGNER, Justice, &c.

True copy. Test:

J. R. Young, Clerk, &c.

By M. A. Clancy, Asst. Clerk.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

Holding a Special Term for Orphans' Court Business.

February 28th, 1892.

In the case of Robert W. McPherson, Executor of RICHARD TILGHMAN EARLE, U. S. Army, deceased, the Executor aforesaid has, with the approval of the court, appointed Friday, the 25th day of March, A. D. 1892, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Washington Post previous to the said day.

Test:

L. P. WRIGHT,
Register of Wills for the District of Columbia.
9 No. 4208 Ad. D. 16.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Samuel W. Connor }
v. } No. 18,284. Equity Docket.
Elizabeth H. Smith.

The trustee herein, J. Holdsworth Gordon, having reported an offer of seventy-five cents per square foot for the East sixteen feet by the depth of ninety feet of lot forty (40) in square seven hundred and thirty-two (732), it is, this 2d day of March, 1892, ordered by the court, that the said sale be ratified and confirmed unless cause to the contrary be shown on or before the 2d day of April, A. D. 1892.

Provided a copy of this order be published once a week for three successive weeks prior to said date in the Washington Law Reporter. The report states that the amount of said sale aggregates the sum of ten hundred and eighty dollars.

A. B. HAGNER, Asso. Justice.
True copy. Test: J. R. Young, Clerk.
By M. A. Clancy, Asst. Clerk.
9 Filed March 2, 1892. J. R. Young, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 2d day of March, 1892.

August J. A. Lohse }
vs. } No. 18,706. Equity Doc. 33.
Jennie Lohse.

On motion of the plaintiff, by Mr. G. W. Albright, his solicitor, it is ordered that the defendant cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for divorce *a vinculo matrimonii*, on the ground of desertion.

By the Court. A. B. HAGNER, Justice.
True copy. Test: J. R. Young, Clerk.
9 By M. A. Clancy, Asst. Clerk.
Filed March 2, 1892. J. R. Young, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 3d day of March, 1892.

Walter S. Cox, trustee, vs. Eliza W. Patterson, Elizabeth P. Patterson, Pierre La Montague, Katharine P. La Montague, Francis Winslow, Harriet P. Winslow and Augustus Jay.

No. 13,707, Eq. Doc. 33.

On motion of the plaintiff, in proper person, it is ordered that the defendants above named, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to have the court, by its decree, confirm the appointment, made by complainant, of Augustus Jay and Francis Winslow, as trustees under the will of Catharine Pearson, in the place of Carlile Patterson, and William H. Phillip, deceased, and also to have the complainant relieved from the trust.

By the Court. A. B. HAGNER, Justice.
True copy. Test: J. R. Young, Clerk.
9 By L. P. Williams, Asst. Clerk.

Legal Notices.**THIRD INSERTION.****This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of ROBERT O. BERNAYS, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 9th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of February, 1892.

ELIZABETH BERNAYS,
8 Isaac W. Nordlinger, Proctor. 500 7th St. n. e.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of CARL L. WINDHOLZ, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of February, 1892.

WM. A. RUESS,
8 Chapin Brown, Proctor. 605 P St. n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration c.t.s. on the personal estate of SAMUEL C. POMEROY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of February, 1892.

AMERICAN SECURITY AND TRUST CO.
8 Edward A. Bowers, Proctor. Percy B. Metzger,
Trust Officer.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

February 19th, 1892.

In the matter of the Estate of CAROLINE C. ACKER, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Walter H. Acker.

All persons interested are hereby notified to appear in this Court on Friday, the 18th day of March, next, at one o'clock P. M., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.

This is to Give Notice

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of JOHN MILLER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscribers, on or before the 20th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 20th day of February, 1892.

CATHARINA MILLER,
8 Carusi & Miller, Proctors. JOSEPH BISCHOF,
311 Q St., n. w.

The Washington Law Reporter.

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[WEEKLY]

No. 11

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WASHINGTON, D. C., - - - MARCH 17, 1892

Statutes of Limitation.

Persons residing beyond the limits of the District of Columbia and not acquainted with our local laws might look in vain in the Revised Statutes relating to the District for the Statutes of Limitations in force here. And for the benefit of such it may be well to explain the matter.

The British Statute of 21 Jac. 1, Ch. 16, is entitled "An act for Limitation of Actions, and for Avoiding of Suits in Law." Alex. British Stat., page 446.

This statute was in force in the colony of Maryland, and remained in force after Maryland became a State, up to the 27th day of February, 1801, when Congress passed the act adopting the laws then in force in that State for the part of the District which Maryland ceded to the United States. This statute has not been changed by Act of Congress, and therefore it still remains in force here in respect of real property.

The Statute of Limitations, which was enacted by the Legislative Assembly of the Maryland colony in April, 1715, Ch. 23, is entitled "An act for limitation of certain actions, for avoiding suits at law." The act is found in Kilty's Laws of Maryland, Vol. 1, Ch. 23. It relates to actions other than real actions. This law also was in force in Maryland on the 27th day of February, 1801, and therefore became a part of the laws of

the District under the Act of Congress of that date.

There are many decisions of the Supreme Court of the United States, the old Circuit Court of the District, and the present Supreme Court of the District, construing these statutes in detail.

THE Acts of Congress of February 27 and March 3, 1801, concerning the District of Columbia, changed the laws of Maryland and Virginia adopted as the laws of that District *only* so far as the new situation of the District made necessary. *United States v. Simms*, 1 Cranch, 252. See *Rhodes v. Bell*, 2 How., 397.

THE limitation of twelve years in the Maryland Statute of Limitations of 1715, Ch. 23, section 6, does not continue to run from the date of the original judgment, if it has been revived by *scire facias* within the twelve years. *Diggs v. Eliason*, 4 Cranch, C. C., 619.

IN *Beatty v. Burnes*, 8 Cranch, 98, it was held that the Maryland Statute of Limitations is a good bar to an action of assumpsit for money had and received, brought to try title under a statutory provision.

IN *Bank of Alexandria v. Dyer*, 14 Pet., 141, on a plea of the Statute of Limitations, it was held that residents of the county of Alexandria, which was then a part of the District of Columbia, were not "beyond seas" in respect to the county of Washington.

"BEYOND SEAS."—Section 466 of the Revised Statutes, relating to the District of Columbia, is as follows:

"Sec. 466. All exceptions in favor of parties beyond the District, which may by laws in force March third, eighteen hundred and sixty-five, be replied or relied on in an action or proceeding brought in the District, are repealed and abrogated."

In the case of *Hogan v. Kurtz*, 94 U. S., 773, the above section (466) was recognized and upheld.

In an Act of Congress approved February 28, 1787, section 2, the foregoing section (466) was substantially re-enacted.

This law abrogates the saving to persons "beyond the seas" contained in the Maryland Act of 1715.

THE common law of England, in force in Maryland at the time of the cession of the District of Columbia, remained and continued in force in the part of the District ceded by that State. *Kendall v. United States*, 12 Pet., 524.

Supreme Court of the United States.

Decisions February 19, 1892.

Matter of application of Woods and Lovejoy for writ of certiorari to the U. S. Circuit Court of Appeals for the Eighth Circuit.

Opinion by CHIEF JUSTICE FULLER: The power of this court to require a case in which the judgment and decree of the Circuit Court of Appeals is made final, to be certified for review and determination, as if it had been brought here on appeal or writ of error, can only be properly invoked under section 6 of the Act of Congress approved March 3, 1891 (26 Stat., 826, 828, Ch. 517). *Certiorari denied.*

EX PARTE Thomas Henry Cooper, owner and claimant of the schooner W. P. Sayward.

Petition for a writ of *prohibition* to the District Court of the United States for the District of Alaska, to restrain the enforcement of a sentence of forfeiture and condemnation entered in that court September 19, 1887, on a libel filed by the United States against the schooner W. P. Sayward, upon the ground that that court was without jurisdiction in the premises. The petitioner, Cooper, is the owner of the vessel, and with his petition a suggestion was presented by Sir John Thompson, K. C. M. G., Her Britannic Majesty's Attorney-General of

Canada, with the knowledge and approval of the Imperial Government of Great Britain, requesting the aid of the court for the claimant, a subject of Her Britannic Majesty. [See 138 U. S., 404.] The main averments are that the schooner W. P. Sayward, a British vessel, while lawfully sailing upon the high seas in latitude 44° 43' north and longitude 167° 51' west, and 59 miles from any land whatsoever, was forcibly seized by an armed revenue vessel of the United States and forcibly carried into the port of Sitka, and there forcibly detained and delivered to the United States marshal, and by the attorney for the United States of the District of Alaska libelled in the District Court, and by said court condemned for having killed fur seal at the place of seizure. It was further averred that the decree of forfeiture was made and entered September 19, 1887; that the petitioner, having been admitted as the actual owner of the said schooner as claimant, appealed to this court April 26, 1888, and docketed said appeal here October 30, 1888, but dismissed the same (January 12, 1891), because advised that an appeal would not lie, and that the decree was and is a nullity; and that all the matters of fact alleged in the petition, save those of which this court takes judicial notice, appear by the record and proceedings of the District Court. A transcript of the record of the District Court of Alaska was returned and filed.

Mr. CHIEF JUSTICE FULLER delivered the opinion of the court. The first part of section 3 of the act of May 17, 1884 (23 Stat., 24), is cited, and the court says:

"Under this section the court thus established acquired all the admiralty jurisdiction within the District of Alaska belonging to District Courts of the United States," and cites *The City of Panama*, 101 U. S., 453.

The opinion of the court is exhaustive. It says finally:

"Upon the face of the libel, the facts found, and the final decree, the District Court clearly had jurisdiction."

Mr. JUSTICE FIELD dissented.

Schooner Sylvia Handy et. al. v. The United States. Appeal from the District Court of the United States for the District of Alaska.

OPINION: We have already held in *ex parte Cooper, ante*: That the Act of February 16, 1875 (Ch. 77, Sec. 1, 18 Stat., 315), applies to appeals taken from decrees of the District Court of the United States for the District of Alaska sitting in admiralty, and we are therefore limited upon this appeal to a determination of the questions of law arising upon the record. Decree *affirmed*.

Mr. JUSTICE FIELD dissented.

Nebraska v. Iowa. Bill in equity to determine boundary line between States. The line by act of admission of the States into the Union, is the middle of the main channel of the Missouri River.

The conclusions of the court are that, notwithstanding the rapidity of the changes in the course of the channel, and the washing from the one side and on to the other, the law of accretion controls on the Missouri River as elsewhere; and that the boundary is a varying line so far as affected by changes of limitation and accretion.

Church of the Holy Trinity v. The United States.

E. Walpole Warren was an alien residing in England. In September, 1887, the church organization made a contract with him, by which he was to remove to the city of New York and enter into its service as rector and pastor.

It was claimed by the United States that this contract was forbidden by Ch. 164, 23 Stat., 332. The court, on error, holds that the statute is not applicable to such a case.

Fielden v. Illinois. Error to the Supreme Court of the State.

Fielden is one of the convicted anarchists of Chicago. The case of Spies v. Illinois was decided by this court November 2, 1887 (123 U. S., 131), dismissing petition for writ of error to the Supreme Court of Illinois.

And Fielden's petition is now denied. He was convicted with Spies and others.

Michael Schwab v. Berggren, Warden of the Penitentiary of Illinois.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

Schwab petitioned for a writ of *habeas corpus*, and the Circuit Court by order dismissed the petition. The case came here on appeal, which is now dismissed.

Edward H. Horner, appellant, v. The United States.

Horner was indicted for violation of the statute against sending lottery circulars through the mails (Sec. 3894 of the R. S. U. S., as amended Sept. 19, 1890, Ch. 908, 26 Stat., 465).

Order for removal of Horner from the Southern District of New York to the Southern District of Illinois for trial.

Petition by Horner for *habeas corpus* and *certiorari*. The Circuit Court for the Southern District of New York dismissed the writ of *habeas corpus* and remanded Horner to the custody of the marshal; whereupon Horner appealed to this court.

The order of the Circuit Court is *affirmed*.

The New Orleans City and Lake Railroad Company, Plaintiff in Error, v. The City of New-Orleans. Question of the right of the city to collect a license tax of \$2,500 for the year 1887. Judgment for plaintiff below. Judgment *affirmed*.

The Washburn and Moen Mfg. Co. et. al. v. The Beat 'Em All Barbed Wire Co. Bill in equity for infringement of letters-patent.

Decree of the Circuit Court reversed, and the case remanded with instructions to enter a decree for the plaintiff for an accounting, etc.

Bertha Hammond et. al. v. William B. Hopkins et. al. Appeal from the Supreme Court of the District of Columbia. Bill

claiming equitable title to city squares 94, 95, 96, 110, 111, in the City of Washington.

Decree below, which was in favor of complainants, reversed and the cause remanded, with directions to dismiss the bill.

Supreme Court of the District of Columbia.

**JOHN CRUMBAUGH, USE OF G. T. RAUB,
v.**

**HENRY D. OTTERBACK AND BENJAMIN
L. OTTERBACK.**

On the 20th of January, 1862, the plaintiff recovered a judgment against Henry D. Otterback and Benjamin L. Otterback, on a partnership debt, in the Circuit Court of this District, for \$10,000, to be released on payment of a smaller amount. A writ of *sc. fa.* was issued thereon in May following, and returned *null bona*, to the October Term, 1862.

No further step was taken to enforce the judgment until August 25, 1873, when a *scire facias* was issued against both defendants, to which was returned on the 29th of that month *scire feci* as to Henry and *nihil* as to Benjamin L.

There was a further suspension of proceedings until November 30, 1885, twelve years and three months, when a new *scire facias* was issued against both defendants, but was not served on Henry and was returned *nihil* as to Benjamin L., on January 9th, 1886.

On the 14th of June, 1889, on the basis of the said return of *scire feci* as to Henry and the second return of *nihil* as to Benjamin L., a *flat* was entered against both defendants. The *flat* was set aside on motion and the defendants allowed to plead to the *scire facias*. The defendants pleaded *nul tiel record*, and the Statute of Limitations; also that the plaintiff, by reason of his failure to follow up his *sc. fa.* of 1873, had discontinued the proceedings thereunder. These pleas were demurred to, the demurrer sustained, and judgment given for the plaintiff, from which an appeal was taken to the General Term: *Held*.

1. That as the *alias* writ of *sc. fa.* was omitted in the case of Benjamin L., in August, 1873, there was a discontinuance of all process against him.
2. If a second return of *nihil* had been had upon an *alias sc. fa.*, and a *flat* entered, the judgment would have died out in twelve years from that date.
3. As Henry B. Otterback was served with a *sc. fa.* in August, 1873, but declined to appear and defend, the next step should have been simply to obtain the *flat* or order for execution. The court *held*, that the *sc. fa.* as against Henry, stopped short with the return of *scire feci* in August, 1873.
4. This judgment was for a partnership debt, which was strictly joint. Section 827 of the Revised Statutes relating to the District of Columbia, applies to an original action only. The object of a *sc. fa.* is to have execution on a judgment already rendered, and is not within the purview of said section 827. The rule of diligence required that the plaintiff should go on and have his *flat* against both parties.
5. The conclusion on the whole is, that the proceeding to enforce this judgment before the present *sc. fa.* was issued, terminated in August, 1873, more than twelve years before; that the defendants' pleas were good in law, and the judgment against the defendants must be reversed.

At Law. No. 11,189. Decided March 14, 1892.
CHIEF JUSTICE BINGHAM and Justices COX and JAMES sitting.

Messrs. WALTER D. DAVIDGE and H. O. CLAUGHTON for plaintiffs.

Messrs. WESTEL WILLOUGHBY and HENRY E. DAVIS for defendants.

Mr. Justice COX delivered the opinion of the Court:

This case involves sundry questions of minor importance, but the principal and important question involved may be presented by a brief statement of facts.

On the 20th of January, 1862, the plaintiff, Crumbaugh, recovered a judgment, on a partnership debt, against Henry B. and Benjamin Louis Otterback in the Circuit Court of this District, for \$10,000, damages, to be released on payment of a smaller amount. A writ of *sc. fa.* was issued thereon in May, which was returned *null bona*, to October Term, 1862.

No further step was taken to enforce the judgment until August 25, 1873, nearly eleven years after the return of the *sc. fa.*, when a *scire facias* was issued against both defendants, which was returned on the 29th of that month, *scire feci*, as to Henry, and *nihil* as to Benjamin L.

A further suspension of proceedings took place, until November 30, 1885, twelve years, and three months since the last step, when a new *scire facias* was issued against both defendants but was not served on Henry and was returned *nihil* as to Benjamin L. on January 9, 1886.

On the 14th of June, 1889, nearly three years and a half after this, on the basis of the return of *scire feci* as to Henry, made nearly sixteen years before, and the second return of *nihil* as to Benjamin, made after an interval of over twelve years between that and the first return, a *flat* was entered against both defendants.

This, however, was set aside on motion and the defendants allowed to plead to the *scire facias*.

Besides the plea of *nul tiel record*, both the defendants pleaded to the *scire facias*, in substance, that the judgment was of more than twelve years' standing when the present writ was issued, and that the plaintiff, by reason of his failure to follow up his *sc. fa.* of 1873, had discontinued the proceedings thereunder. These pleas were demurred to, the demurrer sustained and judgment given for plaintiff, from which an appeal was taken to this court.

The language of the Act of Assembly of 1715, Ch. 23, Sec. 6, is:

"No bill, bond, judgment, statute merchant or of the staple, or other specialty whatsoever, except such as shall be taken in the name or for the use of our Sovereign Lord the King, his heirs and successors, shall be good and plead-

able or admitted in evidence against any person or persons of this province, after the principal debtor and creditor have both been dead twelve years, or the debtor living in action above twelve years standing; saving, etc., etc.

What is the meaning of the terms "twelve years standing?" At first blush it would seem to be *twelve years of existence*, so that the period should be counted from the date of the judgment. And such was the holding of the Court of Appeals of Maryland in the first case before them, in which the question arose, viz., *Mulliken v. Duvall*, 7 Gill & Johnson, 355, decided in 1835, in which the court held that although a *scire facias* had been issued and levied on lands and so returned, the twelve years should count from the date of the judgment, and not from that of the return.

But in the case of *Digges v. Eliason*, 4 Cranch C. C., 619, decided in the same year as the last case, the Circuit Court of the District construed the statute more liberally, and held, substantially, that every new act done towards the execution of the judgment, gave it a new lease of life, and that the "twelve years standing" should be counted from the last proceeding towards the enforcement of the judgment, and, in that case, it should run from the date of a *flat* rendered on it within twelve years before the *sci. fa.* by which that suit was begun, and not from the original judgment. It was suggested that a party might be diligently pursuing his remedies all through the twelve years—perhaps making partial collections during the period—and the twelve years might expire in the midst of his efforts, and it would be unjust to hold that, under such circumstances, his debt had become extinct. The *twelve years standing*, therefore, ought to mean, *standing without any effort to collect*.

Tested by this rule, how does the present case stand?

The practice in *scire facias* is thus stated in § Tidd's Practice, p. 1038, "where the sheriff returns *nihil*, the plaintiff, must sue out a second or alias writ of *scire facias*, commanding the sheriff as before he was commanded, etc., and if upon this second writ the sheriff also return *nihil* and the bail or defendants do not appear, there shall be judgment against them; two *nihilis* being deemed equivalent to a *scire feci*. It was formerly usual to sue out both writs of *scire facias* together, making the *teste* of the second as if the first had been actually returned; but now there is a rule of court requiring that no writ of *alias scire facias* shall issue until the first writ be returnable."

Where there are two writs of *scire facias*, the second should be tested on the return day, or by original, on the quartodie post, of the return of the first, except in error, or the return day happen on Sunday."

In this case, it appears that on a judgment rendered on the 20th of January, 1862, against Henry D. Otterback and Benjamin L. Otterback, in which a *scire facias* had been issued, and returned *nulla bona* to October Term 1862, afterwards a *scire facias* was issued on the 25th of August, 1873, nearly twelve years after the judgment, and nearly eleven years after the *scire facias* was returned *nulla bona*, which *scire facias* was returned by the Marshal, *scire feci* as to Henry, and *nihil* as to Benjamin L. on the 29th of the same month. No steps were taken to enforce the judgment until November 30, 1885, twelve years and three months after the return aforesaid, when the *scire facias* was issued against both defendants, was not served on Henry and was returned *nihil* as to Benjamin.

The only object of a *scire facias* on judgment is to obtain a *flat*. As we have seen, if the defendant is not found, this can only be had on two returns of *nihil*. The single return of *nihil*, therefore, as to Benjamin L. was ineffective and inoperative for any purpose. The *scire facias* issued in November, 1885, was good as an original *scire facias*, if the judgment was still alive, but, in no sense can it be considered as an *alias*, because it was issued long after an *alias* could have issued, which, as we have seen, must have been tested as of the return day of the original. And, besides, it does not purport to be an *alias*. It cannot be connected with or be deemed a continuation of the original, and, therefore, the return of *nihil* in August, 1873, must be deemed the last proceeding in the direction of enforcing the judgment, before the present *scire facias* was issued, more than twelve years afterwards, unless a further contention of the plaintiff be well founded, which I now proceed to consider.

In Evans' Practice, p. 104, it is said: "Connected with the subject of renewals is the rather curious subject of a mode of evading the Statute of Limitations, which the English judges have suffered to grow up, and, indeed, fostered, although it palpably amounts to a judicial repeal of the statute. Nevertheless, the English courts have so thoroughly established it that the Court of Appeals of this State have felt themselves bound not to disturb the current of authority. We allude to the mode of evading the Statute of Limitations by what is sometimes called *entering a writ and continuances*, to save the statute. To effect this object, it is necessary, in the first

instance, to issue a writ and procure it to be returned "not served." This writ must be issued before the statute has attached. If it were really followed up by a series of writs, *bona fide* continuing the action, it would be a fair compliance with the statute. But the English courts have decided that it is not necessary to issue any more writs until it is convenient to have one served; but that entries, of what they call *continuances*, that is, entries of the award of *fictitious writs*, and of the fact that the sheriff did not send the writ, at the proper time, may be made out at any time, connecting the two real writs together. It is even said that these continuances may be made out in the attorney's office.

It is clear that this absolutely puts an end to the protection of the statute."

The author does not refer to any case in which the Court of Appeals recognized this practice.

Now, it is claimed that the course pursued in the present case is that which is approved as legal by Evans. This is to say, the *sci. fa.* issued in 1873 was returned *nihil*, which is equivalent to "not served" or "not to be found," as to Benjamin Louis Otterback, and the continuances may be entered up from that return to the issue of the present *sci. fa.* in 1885 and the proceeding treated as a pending and continuous action.

And we are referred to the case of Gorham v. Shepherd, 6 Mackey, 596, as showing that the practice outlined by Evans has been sanctioned in this District.

In that case, however, no such question was made. It is true that a writ was issued and returned not to be found, and *sub silentio*, an alias was issued some years afterwards without having regularly renewed the first writ from term to term in the meantime. But the defendant accepted service of the last writ and then raised the single question whether suit could be brought at all against a *non-resident*, and whether the original writ was not forbidden by section 767, Rev. Stat. D. C., which says:

"No action or suit shall be brought in the Supreme Court by original process against any person, who shall not be an inhabitant of, or found within, the District, except as otherwise specially provided."

And this question alone was decided by the court.

And it is remarkable that the practice in question has been entirely repudiated by the Court of Appeals of Maryland in the case of Hazlehurst v. Morris, 28 Md., 67, decided in 1867. That was an action of *assumpsit*; a writ issued to September Term, 1862, was returned *tardé*. It was not renewed to the next term. About a

year after the first writ, a second was issued and returned "*summoned*." The court directed the continuances to be entered up as if there had been no omission to renew the writs. From this the defendant appealed, claiming that this omission was a discontinuance. After referring to certain citations, from Tidd's Practice, the court said :

"It is urged by the appellees that the passages above quoted show it to be the practice to keep alive judgments by the issue and return of one *fl. fa.*, and then by merely entering continuances upon the record, without renewing the executions, and that the same practice prevails as to *suits*. We know of no such practice in this State, as applicable either to *suits* or *executions*, and are of opinion that this court announced the only practice when it stated that a judgment might be kept alive for an indefinite time by issuing a *fl. fa.* and having it returned, and then *regularly renewing it from term to term*."

After referring to an unreported case, Denison, administrator, v. Trull, they add :

"So far from that case sustaining the views of the appellees, it shows the practice to have been exactly the reverse of that contended for by them. We do not find any authority for such practice, but are of opinion that such an one ought not be tolerated. Plaintiff might lie by for years and then bring the defendants into court, after their witnesses were dead or their proofs lost or destroyed, and obtain judgments against them upon claims not founded in justice; and the practice be thus used as a means of injustice and oppression. This court could not sanction a practice so fraught with mischief, unless it were so long and so clearly established as to have the force of positive law. Where a party institutes a suit and the summons proves ineffectual to bring the defendant into court and is returned by the sheriff, in order to keep the suit alive, the summons *must be regularly renewed from term to term* until the defendant is taken. *The omission to renew it operates as a discontinuance of the action.* There is, therefore, error in the order of the court below."

Though Evans' Practice and the decision in question differ, they may both be said to be authority for the proposition that the practice in question is not to be extended to any class of cases in which there is no precedent for it.

If I may be allowed a brief digression here, I would say, that an expression in the opinion of the court in Beveridge v. Thompson was probably too broad.

After discussing the English practice of having

a *fl. fa.* returned, and afterward entering up the continuances at any time, the opinion, says:

"This condition of the common law obtained in the State of Maryland, and was derived from Maryland by us, qualified, however, by the Act of Assembly in question."

The case of Hazlehurst v. Morris denies that such practice exists in Maryland, and on referring to Evan's Practice I find that he states, page 55:

"The English mode is to issue one execution, procure it to be returned and filed, and afterwards continue it to the time when a real execution is wanted, by fictitious entries on the record, which are not made until they are required to be used. The Maryland mode is to renew the execution every court, by an order to the clerk to issue execution "to lie."

The expression used in the case of Thompson v. Beveridge, however, had no bearing on the result of the case, because the plaintiff had delayed his proceedings until the judgment was no longer good and pleadable, and the entering up of continuances could do him no good.

To resume: There is really, then, no satisfactory authority for the practice in question, even in regard to original writs, either in Maryland or the District of Columbia.

How is it with regard to writs of *scire facias*? It is very clear that no such practice ever could have existed as to such proceeding, at common law, for the simple reason that there was no necessity for it. The Statute of Limitations of James first did not apply to judgments or other specialties. They never became extinct. A *sci. fa.* could be issued on a judgment at any time, except that after ten years from the date of judgment, a motion had to be made for it, with an affidavit that it had not been paid, and after fifteen years, a rule *nisi* had to issue first. There was no necessity for issuing a *sci. fa.*, or bringing an action of debt, to save the bar of a statute. And therefore there is no trace of such a practice, involving the entry of continuances, as in the case of original process, designed to evade the statute, as far as we are informed. The practice described by Tidd, as to original process, was only supposed to exist in Maryland as a part of the common law. Any such practice in reference to *scire facias* was certainly not so derived. If it ever existed in Maryland, it was indigenous to that State, but we know of no precedent for it in that State or this District. As we have already seen, the only continuance possible in the case of a return of *nihil* to a *sci. fa.* is an *alias* writ. And as that was omitted in this case there was simply a discontinuance of all process

as against Benjamin L. If a second return of *nihil* had been had and a *flat* entered, the judgment would have died out in twelve years from that date. And yet the argument for the plaintiff gives more effect, in the way of continuing the life of the judgment, to a mere return of *nihil* than to a judgment of *flat*, which seems altogether unreasonable. The date of the last proceeding to enforce the judgment against him must be considered to be the date of the return of *nihil* as to him, Aug. 29, 1873, which was more than twelve years before the present *sci. fa.* was issued, and therefore, as to him, the judgment was then no longer good or pleadable and his plea must be adjudged good, and the demurrer to it overruled.

The next question relates to the position of Henry B. Otterback.

It is claimed that, at least in his case, there was a pending cause all the way up to the issue of the *sci. fa.* in November, 1885.

The nature of the writ of *scire facias* is thus described in Foster on *Scire Facias*, pp. 11, 13:

"In all cases where the writ of *sci. fa.* is required, either to revive a previous judgment above a year old, or where a person has become interested in the suit, who was not a party to the judgment, it is a *judicial writ*, to warn the defendant to plead any matter in bar of the execution; and in these cases it is only a *quasi continuance of the former writ*, brought merely to revive the former judgment, and is then properly called a *writ of execution*." Again, "the writ in all cases is in the nature of an action, because the defendant may plead to it; for whenever the defendant may plead to any writ, whether original or judicial, it is in law an action; and although to revive an action it is a judicial writ to continue the effect of, and have execution of, the former judgment, yet it is in the nature of an action, because the defendant may plead any matter in bar of the execution upon the first judgment."

It is, then, both an *execution* and in the nature of an action. And the only reason for the latter branch of the proposition, as stated both in Foster and other works is, that the defendant may plead to it.

If, in this case, Henry Otterback had appeared and pleaded, an issue would have been joined, and there would have been a pending cause which would have been calendared and continued from term to term until tried, and the defendant could only have rid himself of it by a trial.

But when the defendant, though duly summoned, declined to appear and defend, there

was no issue joined, nothing to calendar for trial or continuance. The next step in the proceeding was simply to obtain the *flat* or order for execution.

There was no occasion for delaying this longer than to obtain a second return of *nihil* as to Benjamin L.

Even in the case of original writs, there is no such practice as entering up continuances from term to term, where the defendant, being duly summoned, has defaulted and the plaintiff is entitled to take judgment. In such case the process is executed and satisfied, and there is no occasion for renewals or continuances. So as to a *scire facias* which has been served and is not defended.

The *sci. fa.* has ceased to perform the functions or answer the purposes of an *action* and remained an *execution*, pure and simple, and, it would seem, ought to have the same effect as the issue of a *fl. fa.*, not followed up by any further proceeding. We have not been referred to a single case, English or American, which countenances the idea that, under such circumstances the *sci. fa.* is to be considered a running or continuing action, to have the same effect as if writs had been constantly renewed up to the issue of the present *sci. fa.*.

On the contrary, in the case of *Vanderheyden v. Gardener*, 9 Johnson's R., p. 79, it was held, that where a *sci. fa.* was issued and returned in November, 1808, *scire feci*, but a *flat* was not had until the 13th day of May, 1811, the *flat* must be struck out because the omission to enter it promptly after the return of the *fl. fa.* was a discontinuance. The court said:

"If the plaintiff who sues out a *sci. fa.* to revive a judgment does not proceed upon it within a year and a day, it is a discontinuance of it and the plaintiff must commence by *scire facias de novo.*" * * *

"This cause comes within the rule, for between the entry of default and entry of judgment there was an interval of two years and five months, and any other view taken by the court would really operate as a judicial repeal of the Act of Limitation of Maryland."

The last proceeding to enforce this judgment before the *sci. fa.* of 1873, was the return of the *fl. fa.* to October Term, 1862. According to the rule laid down in *Diggee v. Eliason*, the judgment would cease to be good and pleadable in October, 1874, but for the *sci. fa.* of August, 1873. If that had been defended, and the controversy had lasted for several years, it might be reasonable enough to hold that it was a continuing

proceeding to enforce the judgment, up to its close.

But to hold that a mere return of service to a *sci. fa.*, with a suspension of further proceedings, constitutes a pending action of indefinite duration would make the Act of Limitations a mere nullity.

No other claims than specialties expire of themselves, but the statute merely bars the remedy upon them, *by action*, if the defendant choose to insist on it.

But as to judgments and other specialties, the Maryland statute introduces a new feature by extinguishing the cause of action itself after it has been standing twelve years. It is a very liberal interpretation of the statute to make the limitation count from the last proceeding taken to enforce the judgment. According to this, if two *nihil* had been returned as to Benjamin, and the plaintiff had taken his *flat* in 1873, his judgment would have been good for twelve years from that date only.

But, according to the argument for the plaintiff, if he is able to ask a *flat*, but chooses not to do it, or to take any other step whatever, his omission to take a *flat* is more efficacious in prolonging the life of the judgment than the *flat* itself. He has initiated a self-perpetuating proceeding, and the judgment never can be standing for any time after it, because it has no termination. So that, by the election of the plaintiff not to take his *flat* when he might do so, he gives his judgment a vitality of indefinite duration and makes the statute a dead letter.

We do not think that this claim is maintainable on principle or authority, but hold that the *sci. fa.*, as against Henry, must be held to have stopped short with the return of *scire feci* in 1873.

Another question is presented. This judgment was for a partnership debt, which, at that time, was strictly joint. On a joint judgment, where the debt is joint, and not joint and several, the *sci. fa.* is joint and must follow the judgment. *Foster on Scire Facias*, pp. 20, 21.

And in such case, if a plaintiff voluntarily discontinues or abates as to one, the rule seems to be that it is a discontinuance as to all.

The rule of the common law was that in a joint action, if one defendant is not served, the plaintiff must exhaust his process against that one before he can ask judgment against the others. And hence it was held by the Supreme Court of the United States in *Barton v. Petit & Bayard*, 7 Cranch, 194, that in an action of debt on a judgment against two, where it appeared that the plaintiff had abated as to one, and obtained

judgment on verdict against the other, the defendant moved *in arrest*, without success, the judgment must be reversed.

So, in *Coleman v. Edwards*, 2 Bibb., 595, and *Williams v. Fowler*, 37 B. Monroe, 47, it was held that a discontinuance as to one of two defendants, to a *sci. fa.*, was a discontinuance as to the other.

In answer to this, it is said, that under section 827, Revised Statutes D. C., the plaintiff may elect to sue all or any of joint obligors.

It is obvious, however, that this applies to the original action only.

"Where money is payable by two or more persons, etc., one action may be sustained and judgment recovered against all or any of the parties, etc."

The object of the *sci. fa.* is to have execution on a judgment already recovered, and we do not think it is within the purview of this section.

The plaintiff alleges, as an excuse for not proceeding to *flat* against Benjamin L. Otterback, that he had a right to wait until personal service could be had upon him, so that the *flat* would be binding on him in any other jurisdiction.

If this is not a far-fetched excuse devised by the ingenuity of counsel, it is, at least, one of which the common law takes no note; and moreover, it does not seem to be founded on any good reason. There was no necessity to suspend proceedings until Benjamin L. could be found. The rule of diligence required that the plaintiff should go on and have his *flat* against both parties and then, at any time within twelve years thereafter he might issue a new *sci. fa.*, and have it served personally if the defendants could be found. There was no necessity to suspend proceedings in order to secure personal service.

The conclusion, on the whole is, that the proceeding to enforce this judgment before the present *sci. fa.* was issued, terminated in August 1873, more than twelve years before; that the defendant's pleas were good in law, and the judgment against the defendants must be reversed.

Where one of two makers of a promissory note signs it as surety for the other, an agreement between the holder and the principal maker to extend the time of payment discharges the surety, if made without his consent, and such discharge of the surety without the consent of the indorser discharges the indorser also. *Bank of Uniontown v. Mackey*, 140 U. S., 230; 35 L. ed., 415; 11 Sup. Ct. Rep., 844.

Supreme Court of the District of Columbia.

IN GENERAL TERM.

JOHN H. FLAGG

v.

GEORGE E. KIRK.

1. George E. Kirk gave his note of \$1,000 to Samuel Strong, without consideration, to enable Strong to raise money upon it. Strong endorsed the note to Benjamin F. Butler, for value. Butler brought suit upon the note against Kirk and Strong, in the name of John H. Flagg, by the latter's consent, and obtained judgment. Afterwards Butler assigned the judgment to Strong on settlement. To a *scire facias* to revive said judgment, Kirk pleaded substantially the facts above stated. Held; that the assignment of the judgment to Strong was a satisfaction of it.
2. The jury having found a verdict for the plaintiff, the defendant Kirk moved for a new trial on the ground that the verdict was against the evidence. A new trial is ordered.

At Law. No. 22,498. Decided February 8, 1892.

The CHIEF JUSTICE and Justices COX and JAMES sitting.

Mr. F. T. BROWNING for plaintiff.

Messrs. H. O. & R. CLAUGHTON for defendant.

Mr. JUSTICE COX delivered the opinion of the court:

This was a *scire facias* issued to revive a judgment recovered against George E. Kirk and Samuel Strong. The defendant Kirk, by his attorney, pleaded as follows:

1st. That the said judgment, before the issuing out of the said writ of *scire facias* had been transferred to the use of the said Samuel Strong, and that the said writ was sued out against the said Kirk, for the use of the said Strong, and that the said judgment was obtained upon a cause of action in and upon which the said Strong was primarily liable and in respect to which the said Strong has no cause of action of any kind against the said Kirk.

2d. That before the suing out of the said writ, the principal, interest, and costs therein mentioned, had been paid by the said Strong, there being a judgment against him for the same in this said action, which said payment was a satisfaction and discharge of the said judgment.

On the trial there were only two exceptions taken. There was a verdict for the plaintiff, and there was a motion for a new trial on the ground, first, that the verdict is contrary to the evidence; second, that the evidence was insufficient in law to sustain the verdict; and, third, that at the trial the court erred in its rulings upon questions of law, which are enumerated in the bill of exceptions.

The evidence on the part of the defendant shows that the note on which the judgment was

rendered was executed by Kirk to Strong, without any consideration, to raise money upon; that Strong raised the money upon it by transferring it to General Butler for value, and that Strong applied it entirely to his own use. Afterwards, General Butler brought suit upon the note in the name of Flagg, by the latter's consent, as it was disagreeable for him to appear as plaintiff, perhaps. One witness testified that Flagg admitted that he had no interest in it, but that he had allowed General Butler, for his convenience, to use his name in bringing suit upon it. Under that condition of things, judgment was recovered against Kirk as maker, and Strong as indorsers. Afterwards, a settlement took place, as everybody knows, between General Butler and Strong, which resulted in the assignment of a portion of Strong's claim against the District of Columbia to General Butler, and, in that settlement, this judgment and sundry other securities that General Butler had were reassigned to Strong, and Strong's receipt for them is produced as follows:

"Received of Benj. F. Butler, in settlement made April 3, 1885, the following papers: Deed dated December 13, 1884, of certain lands in Virginia;" "also a like deed" of some other lands; "also an assignment of the Kirk judgment from John H. Flagg." That is to say, General Butler had obtained this judgment through Flagg and assigned it to Samuel Strong, who was, according to Mr. Kirk's testimony, the principal debtor.

Now, at the request, however, of Samuel Strong, the reassignment was not made to him, but to his brother Robert. Robert was put upon the stand, and he says that he paid nothing for the assignment from Flagg to him; that he had no interest in it at all; that his brother told him that he had caused the assignment to be made to him, and that his brother afterwards requested him to bring suit on the judgment against Kirk, but he refused to do it as he did not want to be involved in a law suit, as he had no interest in it, and at his brother's request, reassigned the judgment to Mr. Flagg. Now, this evidence is not contradicted, and it shows that Samuel Strong obtained this note for the purpose of raising money on it, and that he raised the money from General Butler; Samuel Strong was the principal debtor, and when it was reassigned to him *that was a satisfaction of it*. How the jury could have found for the plaintiff we cannot understand. The court gave a very proper instruction, which was, that "if they believe from the evidence that Butler was the real and beneficial plaintiff, and that Flagg was

only the nominal plaintiff; and if they further believe from the evidence that, on a settlement between Butler and Strong, the judgment now in controversy had been satisfied to Butler, they must find for the defendant." Notwithstanding, the jury found for the plaintiff. It was a very plain case of a finding against the evidence, against the whole of the evidence, as there was nothing to contradict the evidence on the points mentioned. Butler reassigned the note to Robert Strong, who put it out again to Flagg who had no interest in it. Samuel Strong was the principal debtor, and as I have said, the judgment was satisfied when it was reassigned to him.

We therefore order a new trial.

MASTER AND SERVANT—DEFECTIVE APPLIANCES—EVIDENCE OF PRIOR ACCIDENTS.—In an action against a railroad company by a member of a switching gang for personal injuries, where defendant admits that the injuries were caused by the overlapping of the dead-woods of two cars of unequal height, which plaintiff was coupling, and interposes the sole defense that plaintiff had assumed such risk, plaintiff cannot show that similar accidents have happened on the road before. It is the general rule that proof of similar accidents is not admissible in evidence. This rule has exceptions, it is true. In *Pomfrey v. Village of Saratoga Springs*, 104 N. Y., 458, a witness who was testifying as to the condition of the sidewalk at the time of the injury which was the subject of the action, was permitted to testify that he had fallen there himself, and it was held to be competent because it tended to show how he came to know the condition of the sidewalk. It has been held that such evidence is competent in a class of cases where it is important to show that the defendant had notice or was warned of the dangerous character of municipal sidewalks, or of the inadequacy of facilities provided for the passage of passengers to and from trains over the company's premises. *Gillrie v. City of Lockport*, 122 N. Y., 403, and cases cited; *Brady v. Railway Co.*, 127 Id., 46. But the exceptions to the rule have not been and should not be so far extended as to permit such testimony in a case where it can have no bearing whatever on the issues, otherwise the general rule which is well grounded would be overthrown. In the case before us it did not tend in any degree whatever to the establishment or support of plaintiff's cause of action to show that the defendant had knowledge of the dangers incident to the coupling of cars such as those which were the occasion of plaintiff's injury.—Second Division, Dec. 22, 1881. *Dye v. Delaware, L. & W. R. Co.* Opinion by Parker, J.

Contract Without Consideration.

In *Morgan v. Hodges*, decided by the Supreme Court of Michigan in December, 1891, it was held that an agreement between a bona fide purchaser of stolen property and its owner, whereby said purchaser is permitted to retain, or released from all liability with regard to a portion of such property if he will return the remainder, is void for want of consideration, though executed. The following are the opinions:

GRANT, J.—“This is an action of trover to recover the value of a horse. In November, 1888, defendants purchased two horses, harness, buggy, robes and whip of one Seaman. Seaman had hired one of the horses, harness, and the other property from plaintiff, at Traverse City, to drive to Frankfort. He drove them to Grand Rapids and sold them to the defendants. Defendants had known Seaman, and had no occasion to doubt his statement that he owned the property. No question is raised of the good faith of the defendants. In the following March plaintiff traced his property into the possession of the defendants. They had sold the horses but still had the other property. The defendants pleaded the general issue, and gave notice of a settlement. The only question arises upon this settlement. The settlement was denied by the plaintiff, but to properly present the question the testimony of the defendants alone is material. Plaintiff, who was a stranger to defendants, went to their stable, and, Frank E. Hodges there, informed him of the loss of this property, and asked if they had bought such property of Mr. Seaman. Mr. Hodges informed him that they had bought two horses, harness, buggy, and robes of Mr. Seaman; that they had sold the horses, and that the other property was in his brother's barn. Mr. Hodges went with plaintiff to see the property. Plaintiff recognized it as his. Plaintiff and Frank went back to defendant's barn and found defendant Chester there. Frank introduced plaintiff to his brother, and told him of his claim. A conversation ensued between them, in which plaintiff stated how Mr. Seaman obtained the property, and Mr. Hodges stated how they came in possession of it, and what they had done with it. Mr. Hodges testifies that plaintiff then said: ‘If you will return me the buggy, robe, harness and things, I will let the horses go, and we will call it square. You got them in good faith.’ To which Mr. Hodges replied, ‘All right,’ and immediately telephoned to his employees at the other barn to let plaintiff have the property. He took

the property away, and subsequently brought this suit.

It is urged on behalf of plaintiff that, even if this arrangement were made, it was void for want of consideration, because there was nothing in dispute, and no controversy had arisen. The learned circuit judge instructed the jury that, if this were so, and if the defendants conceded at the outset that the property belonged to the plaintiff, then there was no consideration for the settlement, and plaintiff must recover; but, if the defendants did not concede that the plaintiff was the owner, and before any determination was reached upon this point—viz., whether the property should be surrendered or not—plaintiff made the offer above given as a settlement of the matter that would be binding upon the parties. This instruction was correct if the facts were sufficient to warrant it. Under the defendants' evidence plaintiff had made no demand for the unconditional surrender of his property. The horses were not very valuable. He might well think it wise to gain possession of the remainder of his property without litigation or trouble. No misrepresentations were made to him by the defendants, nor any fact concealed from him. They had not offered to surrender the property prior to the offer made by him. They said nothing which can be construed into a recognition of plaintiff's title. Their silence upon this point cannot, under the circumstances, be legally construed as a recognition by them of plaintiff's title. The law favors settlements of this character (Bish. Cont., 57). I do not think it was the province of the court to decide that there was no valid agreement under these circumstances. The question was properly submitted to the jury. *Judgment should be affirmed.*”

MORSE, J., concurred with GRANT, J.

LONG, J.—“I think the court below was in error in his charge, as it appears that the defendants only did that, in surrendering the property, which in law they were compelled to do, and therefore there was no consideration for the promise on the part of the plaintiff not to reclaim the horse. *Judgment must be reversed, with costs, and a new trial ordered.*”

CHAMPLIN, C. J., and MCGRATH, J., concurred with LONG, J.

.....

THE signature of the payee to an assignment written out on the back of a negotiable note makes him liable as an ordinary indorser. *Maine Trust and Bkg. Co. v. Butler*, 12 L. R. A., 370; 45 Minn., 506; 32 Cent. L. J., 430; 4 Bkg. L. J., 292; 48 N. W., 383.

A SLEEPING-CAR company is liable for the mistake of its servants in awakening passengers in its car, and causing them to get off at a water tank half a mile from the depot, in the dark and rain, where they were left by the train, when the consequent exposure resulted in serious damage to them. Pullman Palace Car Co. v. Smith, 79 Tex., 468; 14 S. W., 993.

Legal Notices.

Rule of Court.

RULE 20. * * * * Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

FIRST INSERTION.

This is to Give Notice

That the subscribers of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters Testamentary on the personal estate of BERNARD FITZPATRICK, late of the District of Columbia, deceased.

All persons having claims against the said deceased, are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 11th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 11th day of March, 1892.
MARY FITZPATRICK,
11 Carusi & Miller, Proctors. 1338 14th St. n. w.

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters of Administration c. t. a. on the personal estate of ELIZABETH A. TOWNSEND, otherwise known as OLLIE ASTOR, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of March, 1892.
RICHARD SYLVESTER,
11 C. Maurice Smith, Proctor. Property Clerk,
Police Headquarters.

This is to Give Notice

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of SAMUEL STRONG, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscribers, at office of Carusi & Miller, 486 La. Ave., on or before the 8th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 8th day of March, 1892.
WILLIAM J. MILLER.
HALBERT E. PAINÉ.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration c.t.a. on the personal estate of PATRICK CORCORAN, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 11th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 11th day of March, 1892.
JOHN IMRIE,
11 S. T. Thomas, Proctor.

Legal Notices.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of MARGARET L. HULSE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of March, 1892.

D. WEBSTER PRENTISS,
12 D. O'C. Callaghan, Proctor. 1101 14th St., n. w.

This is to Give Notice

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of ANDREW BRYSON, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 9th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 9th day of March, 1892.

CHARLOTTE M. BRYSON,
A. BRYSON,
11 Blair Lee, Proctor. 1822 Mass. ave., Washington, D. C.

This is to Give Notice

That the subscriber, of Philadelphia, Penna., has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of JOSEPH M. JAYNE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 11th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 11th day of March, 1892.

EBEN. C. JAYNE,
11 Wm. G. Johnson, Proctor. 242 Chestnut St., Phila.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, Holding a Special Term for Orphans' Court Business.

March 11th, 1892.

In the matter of the Estate of HARRIET N. LE CONTE, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Eva Le Conte.

All persons interested are hereby notified to appear in this Court on Friday, the 8th day of April, next, at 10 o'clock A. M., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT,

Register of Wills for the District of Columbia.

11 No. 4796. Ad. Doc. 17. Archibald Young, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, Holding a Special Term for Orphans' Court Business.

March 11th, 1892.

In the matter of the Estate of GEORGE F. SCHAFER, late of Washington, D. C., deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Minna Schaefer.

All persons interested are hereby notified to appear in this Court on Friday, the 8th day of April, next, at one o'clock P. M., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Washington Post previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT,

Register of Wills for the District of Columbia.

11 No. 4879. Ad. Doc. 17. Gordon & Gordon, Proctors.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term thereof as a District Court of the
United States for said District.

Filed March 12, 1892. District Court No. 369-

In the matter of the Condemnation of 7100 square feet of land
for the enlargement of the yard of the Public School Building at
Brightwood, D. C.

Upon consideration of the petition filed in this case by John W. Douglass, John W. Ross and William T. Rossell, Commissioners of the District of Columbia, seeking the condemnation of 7100 square feet of land, belonging to the heirs of Betsy Butler, deceased, for the purpose of enlarging the yard of the public school building at Brightwood, D. C.

Ordered, that GEORGE BUTLER, ELLEN BUTLER, ELIZA PROCTOR, JANE BALL, JOHN BUTLER, LEWIS BUTLER, and all other persons owning or claiming any interest in said property under Betsy Butler, or having any interest therein, as occupants or otherwise be, and they are hereby required to appear in this Court and make answer to the said petition on or before the 30th day of March, 1892, at which time the court will proceed with the condemnation of said land.

Provided that the Marshal of the United States for said District, serve a copy of this order on such of the above named persons as may be found in this District at least seven days before the said 30th day of March, 1892.

And provided further that a copy of this order be published in the Evening Star newspaper at least six times, and in the Washington Law Reporter twice before said day.

E. F. BINGHAM, Chief Justice.

True copy. Test: J. R. Young, Clerk.
By L. P. Williams, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 10th day of March, 1892.

Ella M. Abbott } vs. { No. 12,699. Eq. Docket 33.

William Edgar Abbott, Jr. On motion of the plaintiff, by Mr. Simon Wolf, her solicitor, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce from the bond of marriage, on the ground of wilful desertion and abandonment for the full and uninterrupted space of two years and over of complainant by the defendant.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
By M. A. Clancy, Asst. Clerk.

[Filed March 10, 1892. J. E. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 16th day of March, 1892.

William Mayse } vs. { No. 18,709. Eq. Docket 33.

Margaret L. Gaddis and William Gaddis. On motion of the plaintiff, by Mr. Franklin H. Mackey, his solicitor, it is ordered that the defendants, MARGARET L. GADDIS and WILLIAM GADDIS, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to remove a cloud from the title of plaintiff to original lot twenty (20) in square ten hundred and fifty-eight (1058) in the city of Washington, District of Columbia.

By the Court. A. B. HAGNER, Justice, &c.
A true copy. Test: J. R. Young, Clerk, &c.
By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 16th day of March, 1892.

William Mayse } vs. { No. 18,710. Eq. Docket 33.

Charles J. Meister. On motion of the plaintiff, by Mr. Franklin H. Mackey, his solicitor, it is ordered that the defendant, CHARLES J. MEISTER, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to remove a cloud from the title of the plaintiff to original lots one (1), two (2), seventeen (17) and eighteen (18) in square ten hundred and sixty-nine (1069) in the city of Washington, District of Columbia.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
By M. A. Clancy, Asst. Clerk.

Legal Notices

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

March 11th, 1892.

In the matter of the Estate of ISABELLA STEER, late of Washington, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration c. t. a. on the Estate of the said deceased, has this day been made by Edward and Laura Steer, now Lambert.

All persons interested are hereby notified to appear in this Court on Friday, the 15th day of April next, at 10 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration c. t. a. on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Washington Post previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
11 No. 3657. A. D. Doc. 15. J. R. McMillan, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

March 5th, 1892.

In the matter of the Estate of ANN CLANOY, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by George P. Zurhorst and Michael McCormick.

All persons interested are hereby notified to appear in this Court on Friday, the 8th day of April next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER and Washington Post, previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

March 11th, 1892.

In the matter of the Estate of JOHN EDWIN MASON, late of Washington, D. C., deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Henry M. Baker.

All persons interested are hereby notified to appear in this Court on the 16th day of April next, at one o'clock, p. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Washington Post previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
No. 488 Ad. Doc. 17.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

March 12, 1892.

In the matter of the Estate of CLEMENTS STROBL, sometimes known and acting as FRANK FORSTER, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by William D. Judge.

All persons interested are hereby notified to appear in this Court on the 15th day of April next, at one o'clock P. M., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Washington Post previous to the said day.

By the Court. A. B. HAGNER, Justice,
Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
11 No. 4732. Ad. Doc. 17. J. Guilford White, Proctor.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**
Holding a Special Term for Orphans' Court Business.

March 11th, 1892.

In the case of George Voneiff, Executor of CONRAD SENKIND, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 15th day of April, A. D. 1892, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test:

L. P. WRIGHT,
Register of Wills for the District of Columbia.

11 No. 4326. Ad. Doc. 16. C. A. Walter, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

March 11th, 1892.

In the case of Dorsey Claggett and Wm. Ward Mohun, Executors of WILLIE B. CLAGETT, deceased, the Executors aforesaid have, with the approval of the Court, appointed Friday, the 8th day of April, A. D. 1892, at 1 o'clock p. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter, previous to the said day.

Test:

L. P. WRIGHT,
Register of Wills for the District of Columbia.

11 No. 4249. Ad. Doc. 16.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Arthur P. West et al. vs. In Equity. No. 963, Rules 5.

The trustee, Frederick L. Siddons, having reported to the Court the sale for \$150 cash to E. P. Berry of the lot of ground referred to in the decree appointing him trustee, the same being part of lot 75 in square 18 in "Old Georgetown," fronting about 37 feet 9 inches on an alley 30 feet wide, known as West Alley and running back with that width about 75 feet to the north line of said lot, and the same having been considered, it is, by the Court, this 12th day of March, A. D. 1892, ordered, adjudged and decreed that said sale be ratified and confirmed unless cause to the contrary be shown on or before the eighteenth day of April, A. D. 1892.

Provided that a copy of this decree be published in the Washington Law Reporter once in each of three (3) successive weeks prior to said date.

True copy. Test:

11

A. B. HAGNER, Justice.
J. R. Young, Clerk.
By M. A. Clancy, Asst. Clerk.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**
Holding a Special Term for Orphans' Court Business.

March 12th, 1892.

In the case of Albert F. Childs, Frank H. Childs and Mabel I. Childs, Executors of WILLIAM E. CHILDS, deceased, the Executors aforesaid have, with the approval of the Court, appointed Friday, the 15th day of April, A. D. 1892, at 1 o'clock p. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the said Executors will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test:

11

L. P. WRIGHT,
Register of Wills for the District of Columbia.

No. 4299. Dorsey Claggett, Proctor.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**
The 11th day of March, 1892.

Cordelia Cantwell, } vs. } No. 18.726. Eq. Docket 38.

John O. Cantwell.

On motion of the plaintiff, by Mr. E. B. Hay, her solicitor, it is ordered that the defendant, JOHN O. CANTWELL, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is divorce for willful desertion and abandonment.

By the Court.

True copy. Test:

11

A. B. HAGNER, Justice, &c.
J. R. Young, Clerk, &c.
By M. A. Clancy, Asst. Clerk.**This is to Give Notice**

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters Testamentary on the personal estate of ANNA KEY LAIRD, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 12th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 12th day of March, 1892.

MAYHEW PLATER,
3106 N St. n. w.CHARLES M. MATTHEWS,
11 C. M. & H. S. Matthews, Proctors. 714 15th St. n. w.**SECOND INSERTION.****This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters Testamentary on the personal estate of ANTHONY HYDE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of March, 1892.

THOS. HYDE,
Care of Riggs & Co.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of JANE E. O. RHODES, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 5th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 5th day of March, 1892.

his
WILLIAM JOSEPH & McCUALEY,
10 James Hoban, Proctor. mark

1200 6th St., n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 5th day of March, 1892.

The Home for Aged Colored People

vs. } No. 13.584. Eq.
Ann L. Taney et al. } Docket 38.

On motion of the plaintiff, by Mr. Irving Williamson, its solicitor, it is ordered that the defendants, ANN L. TANEY, JOSEPH A. TANEY, THOMAS H. WHITE, KATE WHITE, JOSEPH A. WHITE, SOPHIE WHITE, EDWARD H. WHITE, SUSAN WHITE, HARRY WHITE, M. JOSEPHINE WHITE, ROSA HARTMAN and J. A. HARTMAN, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to remove cloud from title to lots 2 and 3 in J. and G. W. Hopkin's subdivision of square 110, Washington, D. C., the said defendants being the heirs of Rev. Charles I. White, in whom the title to said lots was at one time vested.

This order to be published in the Washington Law Reporter once a week for three weeks prior to said rule-day.

By the Court.

True copy. Test:

10

A. B. HAGNER, Justice, &c.
J. R. Young, Clerk, &c.
By M. A. Clancy, Asst. Clerk.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

Holding a Special Term for Orphans' Court Business.
March 4th, 1892.

In the case of Robert Farnham, Administrator of JANE FARNHAM, ..deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 8th day of April, A. D. 1892, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: L. P. WRIGHT,
10 Register of Wills for the District of Columbia.
No. 4318. Ad. Doc. 16. Henry Wise Garnett, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.
March 4th, 1892.

In the case of Chas. C. Glover and Jas. M. Johnston, Executors of GEORGE BANCROFT, deceased, the Executors aforesaid have, with the approval of the Court, appointed Friday, the 8th day of April A. D. 1892, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: L. P. WRIGHT,
10 Register of Wills for the District of Columbia.
No. 4267. Ad. Doc. 16.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.
March 7th, 1892.

In the matter of the Estate of PHYLENDY M. STODDEER, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Lucina J. Mykel.

All persons interested are hereby notified to appear in this Court on Friday the 8th day of April next, at 1 o'clock p. m., to show cause why the said Will should not be proved and admitted to probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published in the Washington Law Reporter four times previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT.

Register of Wills for the District of Columbia.
10 No. 4358. Ad. Doc. 17. Wm. W. Wright, Proctor.

THIRD INSERTION.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

The 2d day of March, 1892.

Ella T. Mulliken, plaintiff, vs. William L. Mulliken, defendant. } No. 13,586. In Eq. Doc. 38.

On motion of the plaintiff, by Mr. O. B. Hallan, her solicitor, it is ordered that the defendant, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce from the bond of marriage and restoration to her maiden name of Ella Trembley on the ground of two years' abandonment and desertion.

A. B. HAGNER, Asso. Justice.
A true copy. Test: J. E. Young, Clerk.
9 By M. A. Clancy, Asst. Clerk.
[Filed March 2, 1892. J. R. Young, Clerk.]

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

Holding a Special Term for Orphans' Court Business.
February 26th, 1892.

In the case of Robert W. McPherson, Executor of RICHARD TILGHMAN EARLE, U. S. Army, deceased, the Executor aforesaid has, with the approval of the court, appointed Friday, the 25th day of March, A. D. 1892, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Washington Post previous to the said day.

Test: L. P. WRIGHT,
9 Register of Wills for the District of Columbia.
No. 4208 Ad. D. 16.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Samuel W. Conner } No. 13,234. Equity Docket.
v.
Elizabeth H. Smith.

The trustee herein, J. Holdsworth Gordon, having reported an offer of seventy-five cents per square foot for the East sixteen feet by the depth of ninety feet of lot forty (40) in square seven hundred and thirty-two (732), it is, this 2d day of March, 1892, ordered by the court, that the said sale be ratified and confirmed unless cause to the contrary be shown on or before the 2d day of April, A. D. 1892.

Provided a copy of this order be published once a week for three successive weeks prior to said date in the Washington Law Reporter. The report states that the amount of said sale aggregated the sum of ten hundred and eighty dollars.

A. B. HAGNER, Asso. Justice.
True copy. Test: J. R. Young, Clerk.
9 By M. A. Clancy, Asst. Clerk.
Filed March 2, 1892. J. R. Young, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 2d day of March, 1892.

August J. A. Lohse } No. 13,706. Equity Doc. 38.
vs.
Jennie Lohse.

On motion of the plaintiff, by Mr. G. W. Albright, his solicitor, it is ordered that the defendant cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for divorce a vinculo matrimonii, on the ground of desertion.

By the Court. A. B. HAGNER, Justice.
True copy. Test: J. R. Young, Clerk.
9 By M. A. Clancy, Asst. Clerk.
Filed March 2, 1892. J. R. Young, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 3d day of March, 1892.

Walter S. Cox, trustee, vs. Eliza W. Patterson, Elizabeth P. Patterson, Pierre La Montague, Katharine P. La Montague, Francis Winslow, Harriet P. Winslow and Augustus Jay.
No. 13,707, Eq. Doc. 38.

On motion of the plaintiff, in proper person, it is ordered that the defendants above named, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to have the court, by its decree, confirm the appointment, made by complainant, of Augustus Jay and Francis Winslow, as trustees under the will of Catharine Pearson, in the place of Carlile Patterson, and William H. Phillip, deceased, and also to have the complainant relieved from the trust.

By the Court. A. B. HAGNER, Justice.
True copy. Test: J. R. Young, Clerk.
9 By L. P. Williams, Asst. Clerk.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters Testamentary on the personal estate of MICHAEL RODY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 24th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 24th day of February, 1892.

BRIDGET RODY,
9 R. B. Lewis, Proctor. No. 18 Mass. ave. n.e.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters of Administration on the personal estate of ANN RAFFERTY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of February, 1892.

JULIA R. TRUMBULL,
9 James G. Payne, Proctor. Cr. Jas. G. Payne,
City Hall.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of THOMAS J. COFFEE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of February, 1892.

J. WILLIAM LEE,
No. 832 Pa. ave. n.w.
9 A. H. Bell and Geo. E. Johnson, Proctors.

This is to Give Notice

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of BENEDICT O. GREENWELL, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 25th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 25th day of February, 1892.

JOS. M. JOHANNES,
S. A. H. MCKIN,
25 6th St. s.e.
9

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

February 28th, 1892.

In the matter of the Estate of JANE M. FRANKS, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Mary F. Wall.

All persons interested are hereby notified to appear in this Court on Friday, the 25th day of March next, at 11 o'clock a.m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
9 No. 4547. Ad. Doc. 17. Randall Hagner, Proctor.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of HARRY J. RUDY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 27th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of February, 1892.

JOHN F. KELLY,
9 Albert Sillers, Proctor. 31 G St. n.w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of ALBERT M. EVANS, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 24th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 24th day of February, 1892.

MARTIN L. LICHTY,
9 J. Bruce Webb & E. L. Schmidt, Proctors. 3219 P St.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

February 26, 1892.

In the matter of the Estate of MICHAEL BELCHER, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Thomas G. Addison, a creditor.

All persons interested are hereby notified to appear in this Court on Friday, the 25th day of March, next, at 11 o'clock p.m., to show cause why Letters of Administration on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Washington Post previous to the said day.

By the Court. A. B. HAGNER, Justice. L. P. WRIGHT,
Test: Register of Wills for the District of Columbia.

9 No. 4850. Ad. D. 17. Waters & Taylor, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

February 26th, 1892.

In the matter of the estate of ALBERT BOULDON, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased, has this day been made by George R. Williams.

All persons interested are hereby notified to appear in this Court on Friday, the 25th day of March next, at 11 o'clock a.m., to show cause why Letters of Administration on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. A. B. HAGNER, Justice. L. P. WRIGHT,
Test: Register of Wills for the District of Columbia.

9 No. 4855. Ad. Doc. 17. W. K. Duhamel, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 29th day of February, 1892.

Ada Hazlrigg } v. No. 13,888. Eq. Docket 82.

Oliver Hazlrigg. On motion of the plaintiff, by Mr. H. B. Moulton, her solicitor, it is ordered that the defendant, OLIVER HAZLIGG, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain an absolute divorce from the defendant on the ground of desertion and abandonment.

By the Court. A. B. HAGNER, Justice, &c. J. R. Young, Clerk, &c.
True copy. Test: By M. A. Clancy, Amst. Clerk.

The Washington Law Reporter.

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WASHINGTON, D. C., - - - MARCH 24, 1892

Supreme Court of the United States.

Decisions February 29, 1892.

Alfred M. Hoyt et al. v. William H. Latham et al.

Appeal from the Circuit Court of the United States for the District of Minnesota.

Bill for an accounting, upon the following state of facts:

On the 31st day of October, 1867, a contract was executed between Alfred M. Hoyt, Danford N. Barney, Ashbel H. Barney, Charles F. Latham, and five other associates, of the first part, and the Winona and St. Peter Railroad Company of the second part, by which, after reciting that the parties of the first part had loaned and advanced to the corporation large sums of money, and had constructed and equipped 105 miles of its railroad in Minnesota, whereby the corporation had become indebted to them in a large sum of money, it was provided that certain payments should be made upon that indebtedness by the issue to them of stock and bonds, and that a portion of a Congressional land grant owned by the railroad company should be conveyed in satisfaction of the residue. The land so to be conveyed was as many acres theretofore granted by Congress as the corporation should receive by reason of the construction of such road for a distance of 105 miles westerly from Winona, reserving the right of way and depot grounds. The lands were to be con-

veyed to the parties of the first part, as they should direct, whenever, and as soon as, the railroad company had obtained title thereto under the acts of Congress. Instead of taking a conveyance of the lands, the parties interested elected to take the proceeds of their sales, as they were permitted by the contract to do, and therefore, as they were sold by the railroad company, the proceeds were from time to time paid over to them. The number of acres to which the company was entitled was ascertained by judicial decree to be 514,266 and a fraction.

Charles F. Latham, who was entitled to one thirty-seventh of these lands or their proceeds, died intestate August 25, 1870, leaving heirs, etc. The heirs entered into a settlement of their claim and executed a release.

Plaintiffs, in December, 1876, filed their bill claiming that the proceedings and the release executed by them did not divest them of their interest in the lands. The Circuit Court decreed in favor of the plaintiffs, and from this decree an appeal was taken.

The decree of the court below is reversed and the case remanded with directions to dismiss the bill, with costs.

Mr. Justice FIELD dissented.

AN act of the Legislature of New York, approved June 9, 1888, provided the maximum charge for elevating, receiving, weighing, and discharging grain by means of floating and stationery elevators, and a penalty for violating the act.

J. Talman Budd was tried before a criminal term of the Superior Court of Buffalo upon an indictment charging him with receiving fees contrary to the act. He was convicted, fined \$250, and sentenced to be committed to jail for a period not exceeding one day for each dollar, etc. He appealed to the General Term of the Superior Court of Buffalo, by which the judgment was affirmed. He then appealed to the Court of Appeals of New York, which affirmed the judgment of the Superior Court and entered

judgment (117 N. Y., 1.) This case and two others came up on error, and were heard and decided in one opinion.

It was claimed that the statute of New York is contrary to the provisions of section 1 of the Fourteenth Amendment to the Constitution of the United States, in depriving the citizen of his property without due process of law, and that elevators are private property, not affected with any public interest, and not subject to the regulation of rates.

In a learned opinion delivered by Mr. Justice BLATCHFORD, the three judgments of the New York courts were *affirmed*.

Mr. Justice BREWER dissented, and Mr. Justice FIELD and Mr. Justice BROWN concurred in the dissent.

Maurice Gandy et al. v. The Main Belt-ing Company et al.

Appeal from the Circuit Court of the United States for the Eastern District of Pennsylvania.

Bill in equity for infringement of letters patent No. 228,186, issued June 1, 1880, to Maurice Gandy for an improved belt or band for driving machinery. Prayer for an injunction and accounting.

The answer denied that the invention was new or patentable, and denied infringement. From a decree dismissing the bill (28 Fed. Reporter, 570) the plaintiff appealed to this court.

The dismissal below was upon the ground that the same testimony which showed priority of invention on the part of Gandy showed a public use on sale by him of such invention more than two years prior to his application.

The decree of the Circuit Court is *reversed*, and the case remanded with directions to enter an interlocutory decree for the plaintiff, and for further proceedings, etc.

William P. Dunwoody v. The United States.

Appeal from a judgment of the Court of

Claims. Claim for additional compensation of Dunwoody as a member of the National Board of Health.

The judgment of the court below in favor of the defendant is *affirmed*.

Decision March 7, 1892.

The Chicago, Rock Island and Pacific Railway Company v. The Denver and Rio Grande Railroad Company.

Appeal by both parties from the Circuit Court of the United States for the District of Colorado.

Bill in equity to enforce an alleged right to certain terminal facilities at the city of Denver, and for certain incidental purposes. The litigation arose out of a contract dated February 15, 1888, between these companies, for the joint use and possession of the Denver road between Denver and Pueblo. The material parts of the contract are printed in the margin with the opinion.

Decree of Circuit Court, for plaintiff, *affirmed*, with modification of the 5th paragraph, and the costs in the Supreme Court divided.

Supreme Court of the District of Columbia.

IN GENERAL TERM.

JAMES P. WILLETT ET AL.

v.

HENRY B. OTTERBACK ET AL.

1. In a case where the original judgment is not questioned, nor the proceedings on that judgment up to the time of the issuance of *scire facias*, and a writ of *scire facias* is issued, and a judgment of *flat* rendered upon the return of the writ—unless the proceedings in *scire facias* are so far irregular as to be absolutely void, the judgment must stand.
2. If the proceedings were simply irregular and voidable, such as might and would have been set aside on motion, or such as might, if a motion had been made to set aside, have been amended by the court, then they cannot be considered in this collateral proceeding.
3. The judgment cuts off the inquiry into these proceedings, which are clearly and manifestly collateral, and it cuts off investigation of any proceeding prior to that judgment on the *flat*.
4. The bill in equity, claiming the right to satisfy the judgment, with all expenses in the original case after the judgment of *flat* is entered, is also collateral and the same rule applies to it.

In Equity. No. 12,094. Decided February 2, 1892.

The CHIEF JUSTICE and Justices COX and JAMES sitting.

Messrs. EDWARDS & BABNARD for complainants:

The following is a copy of section 6 of the Maryland Act of 1715, with the saving clauses in full:

"No bill, bond, judgment, recognizance, statute merchant or of the staple or other specialty whatsoever, except such as shall be taken in the name or for the use of our sovereign lord, the king, his heirs and assigns, shall be good and pleadable or admitted in evidence against any person or persons of this province after the principal debtor and creditor have been both dead twelve years or the debt or *thing in action* above twelve years' standing; saving to all persons that shall be under the aforementioned impediments of infancy, coverture, insanity of mind, imprisonment, or being beyond the sea, the full benefit of all such bills, bonds, judgments, recognizances, statutes merchant or of the staple or other specialties for the space of five years after such impediment removed, anything in this act before mentioned to the contrary notwithstanding." Md., 1715, Ch. 23, Sec. 6.

The late Circuit Court decided that the expression, "twelve years' standing," as used in this statute, and applied to judgments, means twelve years' standing without any proceeding towards enforcing payment. *Diggs v. Eliason*, 4 Cr. C. C., 619.

This case also holds that this sixth section is properly a part of the "Act for Limitation of Actions," etc., and its object seems to be the same as the other parts of the statute.

In *Horsey v. Beveridge*, 4 Mackey, 291, this court (Chief Justice Carter and Justices James and Merrick) decided that a judgment was alive and could be executed at any time before the expiration of twelve years from the date of the return of the last execution.

The rule of this court (No. 121) not only requires a plea to a *scire facias* but a plea without an affidavit showing a defense to the action, is treated as a nullity. *Loeber v. Moore*, 19 Wash. Law Rep., 193 (March 26, 1891).

Blackstone gives the following clear statement of the law relating to *scire facias*:

"But all these writs of execution must be sued out within a year and a day after the judgment is entered; otherwise, the court concludes *prima facie* that the judgment is satisfied and extinct; yet, however, it will grant a writ of *scire facias* in pursuance of statute Westm. 2, 13 Edw. 1, C. 45, for the defendant to show cause why the judgment should not be revived, and execution had against him; to which the defendant may plead such matter as he has to allege, in order to

show why process of execution should not be issued; or the plaintiff may still bring an action of debt, founded on this dormant judgment, which was the only method of revival known by the common law." 3 Bl. Com., 421.

In *Beanes v. Hamilton*, 3 Gill, 275, the Court of Appeals of Maryland, in construing this statute, held, that where the statute of limitations was imperfectly pleaded to a *sc. fa.* to revive a judgment fourteen years old on its face, that the plea would be disregarded, and the judgment revived. See also *Kirkland v. Krebs*, 34 Md., 93.

In *Simpson v. LaSalle*, 4 McLean, 352, a judgment barred *prima facie*, against two defendants, was sought to be revived by *sc. fa.* One of the defendants pleaded limitations, and the court held, that as to him, it would not be revived, but as to the other defendant, who failed to plead, the judgment was properly revived.

In *Elliott v. Knott*, 14 Md., 121, the court held that a writ of *fl. fa.* issued after the statutory period, wherein it could be regularly issued, and after death of defendant, and without revival by *sc. fa.*, was not void; and that it would be treated as valid in a collateral proceeding.

We claim that the *ex parte* order made December 3, 1874, reviving the judgments in the name of the executors, was not void, that method being allowable as a matter of practice, and supported by the practice of other courts. *Herman on Executions*, Sec. 82; *Darlington v. Speakerman*, 9 W. & S., 182.

There is no uniformity in regard to the practice in this matter. *Herman on Exec.*, Sec. 82.

Neither is the execution void, which issued thereafter, December 14, 1874, in the name of complainants as executors of the deceased judgment plaintiff.

It is stated by Herman, that writs are only voidable in the following, among other instances:

"An execution issued by the executor without a formal substitution, * * * or if issued upon a dormant judgment, or within a period forbidden by law." *Day v. Sharp*, 4 Whart., 339; *Brown v. Long*, 1 Ired. Ch., 190; *Mariner v. Coon*, 16 Wis., 490, 493.

Neither are any of the writs in this case rendered void by the errors in reciting the names, amount of judgment, court wherein rendered, etc., because when all the documents are taken together, it is apparent what judgments are meant, and the executions are valid, until set aside, and their validity cannot be inquired into in this proceeding. *Herman on Executions*, Secs. 61, 62; *Stewart v. Stockton*, 13 S. & R., 199; *Durham v. Heaton*, 28 Ill., 264; *Ward v.*

Prather's Admr., 1 J. J. Mar., 4; Walden's Lessee v. Craig's Heirs, 14 Pet., 147.

All the various writs and proceedings have the correct numbers of cases, and reference to the original judgments, and proper description of parties.

The case of Durham v. Heaton, 28 Ill., 264, was one embracing some of the objections raised here, namely, that the execution was variant from the judgment, being for a larger amount, and that it recited the judgment to have been recovered by the plaintiffs, whereas, it was in favor of their intestate, they being substituted as administrators, after judgment.

The court said: "A void writ has no vitality, and nothing exists by which it can be amended—the breath of life cannot be infused into it, and it is a nullity. Not so with a writ voidable only. Such a writ, if a summons, can be amended by the *preceipe*—if a *fl. fa.*, by the judgment; and all acts done under it, are valid and binding, until set aside."

All these criticisms are errors in proceedings; not evidence of *no* proceedings; right things done, in a *wrong* manner; not nullities, or wrong things done by court without jurisdiction.

In the case of Day v. Sharp, 4 Whart., 341, the court says, in a case where *scire facias* was issued in the name of a dead plaintiff without first issuing a *scire facias* to revive: "A distinction has long existed between process which is absolutely null and void * * * and process which is voidable merely. When the process is altogether irregular and defective, it is considered as null and void; and if it be vacated or set aside by the court, the party who acted under it becomes a trespasser from the beginning. * * * Even there, however, before the party can be sued in trespass the process must first be set aside or vacated; for if it still subsist in full force and vigor at the time of the action brought, the party may justify under it. * * * In the case of a plaintiff's death no doubt it is the duty of the party who issues process of execution to substitute the names of his executors or administrators; and as there is a new party to issue a *scire facias*. But the not issuing of a *scire facias*, where the law requires it, has not *per se* been considered as making an execution void, or the party issuing it, a trespasser.

In Jackson v. Bartlett, 8 Johns., 361, it was held that if an execution issues after a year and a day, without a revival of the judgment by a *scire facias*, it is only voidable at the instance of the party, and not void. * * * The line of distinction has not been accurately drawn, as

to all the cases where the process is merely erroneous and those where it is an absolute nullity; and perhaps each case must depend, in some measure, on its own circumstances; but as the issuing of the execution, *if done by a party entitled to collect the money upon it*, is rather a defect in the formal mode of proceeding—that is to say, a use of the name of a deceased plaintiff, instead of substituting executors or administrators, and issuing a *scire facias*, than a substantial defect, it seems to me on the authorities that it must in such case be considered as an erroneous proceeding, not an irregular or void one."

Judgments are never considered void for error only. Freeman on Judgments, section 135.

The return of the *sci. fas.* as to Louis Otterback, "not found," instead of "*nihil*," and on the day they were issued, instead of at the next rule day, do not render the same void as held by the Supreme Court of Illinois in Williams v. Ives, 49 Ill., 512.

Neither is the judgment of the revivor of 1877, as against Louis Otterback, void, because rendered before the term at which he was required by the writ of *scire facias* to appear.

The court says, in 75 Cal., 220, "the fact that judgment was rendered upon default entered before the time allowing defendant to answer had expired rendered the judgment erroneous simply, not void."

In the case of Mitchell v. Aten, 37 Kan., 35, a defendant had been notified by publication, and given until a certain day to appear and answer. After notice published, but before appearance day, judgment was entered. The court says:

"Jurisdiction having been obtained (by the publication), the fact that the judgment was rendered sooner than it should have been, does not make the judgment void; a judgment thus rendered is irregular only. It might have been set aside by motion or upon proceedings in error, but the judgment is not vulnerable to a collateral attack."

This point is also decided in Town of Lyons v. Cooldge, 89 Ill., 534. See Freeman on Judgments, sections 119, 128, 135, where this point is distinctly stated, and the reason given for the rule.

As in the case at bar, where judgment was rendered on the day of the return, so in Stevenson v. Newcomb, 5 Harrington (Del.), 150, where judgment could regularly be entered only five weeks after the return, it was entered on the day of the return, and held only erroneous—not void.

In White v. Crow, 110 U. S., 188, it is held that

jurisdiction attaches so soon as service is made of the summons, and a judgment before time for the answer is not void.

Justice Woods, speaking for the court in this case, says: "The question arises whether the rendition of the judgment before the time for filing defendant's answer had expired renders the judgment void. We are of the opinion that it does not; that its rendition was simply erroneous and nothing more. The court having jurisdiction to render the judgment, and having rendered it, the law, when the judgment is collaterally attacked, will make all presumptions necessary to sustain it. Grignon's Lessee v. Astor, 2 How., 319. The defendant, being in court, was bound to take notice of its proceedings, and might have corrected the error at any time during the term." See, also, Cooper v. Reynolds, 110 Wall., 308; Cornett v. Williams, 20 Wall., 226.

In the case of Woodward v. Baker, 10 Oregon, 494, the court says (quoting Freeman): "From the moment of the service of process the court has such control over the litigants that all its subsequent proceedings, however erroneous, are not void. The fact that the defendant is not given all the time allowed by law to plead * * * will not make the judgment void."

In the case at bar, jurisdiction is acquired to render judgment of revivor, so soon as *two sci. fas.* are returned *nihil*, or "not found," and if such judgment was rendered before the appearance day, it would be set aside on a proper and timely motion filed, but cannot be questioned in another court or proceeding. The two *nihil*s, so far as this kind of judgment is concerned, are equivalent to personal service. Freeman on Executions, Sec. 89.

All the alleged errors and irregularities in this record do not of themselves render the action of the court null and void; and they are all such as may be amended, or treated as if they were amended, so far as this proceeding is concerned. Freeman on Executions, Secs. 71, 88, 90, 92.

The court would not, at this late day, vacate these judgments of revivor in order to let the defendants plead limitations; and there is no other sort of defense made or suggested by them in opposition to the claim of complainants seeking to have an honest debt paid. Angell on Limitations, Sec. 285.

A judgment of *flat* on a *scire facias* proceeding has all the attributes and conclusive effect of a judgment in any other case, and cannot be impeached in any collateral suit. Dickson v. Wilkinson, 3 How., 57, 61.

The Supreme Court says, in this case, that "a *scire facias* in an action to which the defendant may plead any legal matter of defense, * * * It is a universal rule of law that if the party fail to plead matter in bar to the original action, and judgment pass against him, that he cannot afterwards plead it in another action founded on that judgment; nor in a *scire facias*. * * * The judgment on the *scire facias*, although ancillary to the original judgment, and the foundation of the proceeding on the second *scire facias*, was, nevertheless, a final judgment, * * * conclusive upon the parties; and opposed an insuperable bar to any plea of either party, whether of law or of fact, designed to go beyond it."

Should, however, any doubt exist as to the correctness of these conclusions, there is still another point which we would suggest as sufficient to sustain the bill, and that is this:

Jurisdiction always remains with the court wherein a judgment is rendered, to execute that judgment; and this court has decided that the effect of an execution is to give life to the judgment for a period of twelve years from the date of its return; and whenever such a writ may be issued, it is a *judicial process*, a *judicial proceeding*, that must be set aside before it can be stripped of its attributes and functions; and in this case, as no motion has ever been made to quash or set aside the various executions issued on these judgments, they are still in full force by virtue of said writs; and therefore we need not go back further than to the last *fl. fa.*, in 1889, for the purposes of this suit.

Prima facie that execution, with its return, implies a valid judgment at law, which the court at law is endeavoring to execute by all the means at its command, and which execution is unavailing for no other reason than the defendants have no property subject to levy and sale; and therefore the necessity to call upon a court of equity for assistance in executing the said judgment.

The complainants, knowing of the expectancy of the defendants under the will of Philip Otterback, and looking forward to that as their only hope of collection, have always endeavored to keep their judgments in condition to avail themselves of it; and if the case is in any way open to doubt, we submit that the doubt should be solved in favor of justice and right, rather than to relieve debtors from the payment of a just obligation for no better reason than because it has been owing for a long time, during which they have done nothing

either towards payment, or towards avoiding the judgments or executions of the court.

HENRY E. DAVIS for defendants:

(1) The original *fl. fas.* were void.

They did not follow the terms of the judgments, which were \$1,200 each, to be released on payment of a smaller sum.

An execution is void which is issued upon a judgment for one sum, when the judgment is for that sum, to be released upon the payment of a different sum. *Walker v. Marshall*, 7 Ired. Law, 1; *McKnew v. Duvall*, 45 Md., 501; See *Moore v. Garretson*, 6 Md., 444.

(2) The suits were never, in legal contemplation, revived in the names of the executors.

a. There should have been a *scire facias*.

"In all cases where a new person who is not a party to a judgment or recognizance derives a benefit by or becomes chargeable to the execution, there must be a *scire facias* to make him a party to the judgment. In the case of the death, therefore, of a sole plaintiff or defendant after judgment, interlocutory or final, the legal representatives of such plaintiff or defendant deriving a benefit by or becoming chargeable to the judgment, being strangers to the record, require a *scire facias* to issue to make them privy to the judgment, in order that the execution by which they are to be benefitted or charged, may be warranted by the judgment and that the record may be consistent with itself. *Foster on Scire Facias*, 175.

The executors of a deceased plaintiff, even within a year and a day, cannot have execution without a *sci. fa.* 2 Wms. Saunders, 6 n., 1; *Pennoyer v. Brace*, 1 Salk., 311; *Foster Sci. Fa.*, 99; 6 Bac. Abr., 112; 5 Com. Dig., 773; 2 Tidd's Pr., 1024.

"The plaintiff died after the verdict and before judgment was entered thereupon. Afterwards judgment was entered and execution taken out without any *scire facias* sued out at the suit of the plaintiffs' representative; and now it was moved to set aside the execution of *fleri facias*; and it was held that although the judgment was regularly entered by the 17 Car. 2, Ch. 8, yet the *fleri facias* issued irregularly, for there ought to have been a *scire facias*, and the execution was set aside and the money levied thereupon ordered to be returned to the defendant." *Earle v. Brown*, 1 Wilson, 302.

This continues the law of this jurisdiction. In *Hanson v. Barnes*, 3 G. & J., 359, it is said by the court;

"The general principle that where a new person is to be benefitted or charged by the execu-

tion of the judgment there ought to be a *scire facias* to make him a party is admitted, but it cannot apply to a case where the new party becomes interested after the process is regularly in the hands of the officer for execution." And see *Trail v. Snouffer*, 6 Md., 308.

In the case at bar there was no outstanding process at the time of the suggestion of the plaintiff's death, the *fl. fas.* theretofore issued having been duly returned *nulla bona*.

And the necessity for applying the rule in this case is especially manifest, inasmuch as the complainants profess to be executors, implying a will and the issue of letters testamentary. In fact, the suggestion of death in the suits at law (which is not printed in the abstract of record) begins as follows:

"And now comes here Mr. Cleary, attorney for the executors, and suggests the death of the plaintiff, and the same is not denied; that he died leaving a will, in which he appointed James P. Willett and Robert Willett his executors, and that they have duly qualified as such," etc.

Surely the defendants had a right to be heard on these assertions.

b. And the supposed answer of the complainant's counsel to the position here asserted does not touch the question.

That supposed answer is that the so-called judgment of revivor was, at the most, voidable only: an irregularity, and not a nullity; and, until set aside by some direct attack, a conclusive judgment.

Now, while it is true that as in such cases as that of a stranger to a record buying at an execution sale no mere irregularities can avail to invalidate the sale, the case is far different where the irregularities are insisted upon as between the parties to the record. After execution of a judgment everything is presumed in favor of the judgment, but when execution is sought, and the interposition of the court is necessary to that execution, the court will not aid the enforcement of what it sees to be an improper judgment.

All of the cases cited by complainants' counsel on this point are, without exception, cases in which strangers to the original action sought to justify under an irregular but not void judgment or execution. No case is cited in which, between the parties, a court enforced by execution such irregular judgment. This point is further considered below.

And in the case at bar all the judgments were by default. And in case of a judgment by default everything is open to examination; no

irregularity is waived. *Harris v. Hardeman*, 14 How., 338.

3. But even assuming the substitution of the executors to have been sufficient (which is still denied), the judgments asserted by the complainants are not shown by the bill to be, and, in fact, are not, legally enforceable; because, first, the original *sci. fas.* do not recite the judgments; secondly, assuming the original *sci. fas.* to be sufficient, the judgments on the *sci. fas.* appear to have been rendered not only without the issue of a proper *alias*, but also upon a supposed *alias*, which, on its face, is seen not to correspond to the original *sci. fa.*, and, accordingly, to be invalid and insufficient; and, thirdly, the judgments on the *sci. fas.* as to Louis Otterback were entered prematurely and before the court had acquired jurisdiction of him for the purposes of such judgments.

a. The original *sci. fas.* do not recite the judgments.

As already pointed out, a writ which does not follow the judgment, upon which it assumes to be based, is void, and not merely irregular or voidable. So far is this the case, that a sale on an execution which does not follow the judgment upon which it purports to have been issued, is void, even as to a stranger. This is familiar law. While a stranger buying under a writ which follows a judgment may rely upon the judgment for his protection, he may not, on the other hand, rely upon a writ which does not follow the judgment.

"As the execution was the mode of carrying the judgment into effect, it was necessary that the execution should strictly conform to the judgment and be authorized by it or it was void." *Cox's Practice*, 164.

In the case at bar, the original *sci. fas.* were fatally defective in two particulars: (1) They purported to be issued upon a judgment obtained by the executors; and, (2), they were silent as to interest on the principal sums. Suppose a sale of property of the defendants in obedience to such a writ; the purchaser would buy on an execution of the non-existing judgment; and the marshal would not only be selling on a non-existing judgment, but also for an amount less than that for which the supposed judgment was actually rendered. No one will pretend that such a proceeding could stand even for a stranger; how much less when parties themselves are disputing its propriety and sufficiency.

b. There was no proper *alias sci. fa.*

As to Louis Otterback, it cannot be pretended that he is bound by the so-called judgment of

flat unless there was issued against him a sufficient *alias* writ of *sci. fa.* And there was no such writ. The so-called *alias* writ was not such in fact. Nothing on its face indicates that it was anything else than an ordinary original writ of *sci. fa.* But if it be assumed to have been intended as an *alias* writ, it was wholly irregular and ineffectual, because (1), it does not recite the original writ, and (2), it does not correspond to the original writ.

(1) The recital of the prior writ was essential to the validity and efficacy of the *alias*. Where the first writ is not served and the court's jurisdiction to give judgment of *flat* rests on the return of two *nihil*, the record must show affirmatively that all the essentials of jurisdiction exist; and unless the writ upon which the second return of *nihil* was made appears to have been an *alias* writ, the proceeding to judgment was so irregular as to be void. See *Foster on sci. fa.*, 27; *Bowie v. Neal*, 41 Md., 124; *McKnew v. Duvall*, 45 Md., 501.

(2) But irrespective of this, the second *sci. fa.* was wholly ineffectual and void, because it does not correspond to the first *sci. fa.* or to the original judgment in any of the cases.

In each case, the first *sci. fa.* recites the judgment as recovered by the plaintiffs "in the Circuit Court, D. C.", while the so-called *alias* recites the judgment as having been recovered in the Supreme Court of the District, and, like the first, erroneously recites the judgment as to amount.

Counsel for complainants consider this a harmless irregularity. But inasmuch as the due issue and return of the *alias sci. fa.* were essential to give the court jurisdiction to act, the irregularity is at once seen to be fatal.

c. The judgments of *flat* as to Louis Otterback were rendered prematurely and before the court had jurisdiction to render them.

The supposed *alias sci. fa.* in each case was issued October 4, 1877, and returned "not found" the same day, and thereupon, still on the same day, the *flat* was entered.

The command of the writ was that the defendant, Louis Otterback, should appear before the court at its first special term ensuing service, to show cause why execution should not be had. The writ accordingly was not returnable until such special term, and the action of the court could not be invoked until then. The return and judgment on the same day that the writ was issued were therefore irregular and void.

But, it is said, these were not such irregularities as to make the judgment void, and several cases are cited in supposed support of this view.

As to all these cases, it is to be noted that they are collateral proceedings, one of the parties to which was a stranger to the case in which the irregular action was had. Moreover, the cases, on analysis, will be found to be far different from that at bar.

In *Williams v. Ives*, 49 Ill., 512, there were two *nihilis* returned on the days of the issue of the writs, but the action of the court was not had until *after the time limited for the last return*. The second of the two writs was returnable on the fourth Monday of August, 1862, and judgment was not rendered until March, 1863. In this case the court (pages 514, 515), in effect justifies its holding by declaring that "the ancient strict and formal rules of the British courts in regard to service of process and rules on parties have never obtained in our courts, and under the more modern practice of those courts the rules have become much relaxed;" which may be true of the Illinois courts.

In re Newman, 75 Cal., 213, was a case in which it was sought collaterally to attack a decree of divorce, rendered in another case, by default, before the time for answering had expired; and the court relied upon the fact that the requisite notice by publication having been given, that was equivalent to service; and that the court having, by such service, obtained jurisdiction of the defendant, he was to be deemed as, in effect, *in court* but delaying his answer, and that the premature decree was, under those circumstances, erroneous only, but not void. In the case at bar the premature return of "not found" was not equivalent to service, and so could not be deemed to have brought Louis Otterback into court.

Mitchell v. Aten, 37 Kans., 35, was a similar case; the court saying that "*jurisdiction having been obtained*, the fact that the judgment was rendered sooner than it should have been does not make the judgment void."

So in the case of *Lyons v. Cooledge*, 89 Ill., 529, the court, speaking of the service by publication, said: "From the date of such service the court had such *jurisdiction of the defendant* that its subsequent proceedings were not void, however erroneous they may have been." Page 534.

And in *White v. Crow*, 110 U. S., 183, the court says, in terms, that the service upon the defendant "was regular and defective. The court therefore, had jurisdiction of the parties;" and, it is added, "the defendant, *being in court*, was bound to take notice of its proceedings, and might have corrected the error at any time during the term." Pages 187-8.

Now, one of the most familiar grounds for

attacking a judgment, and which is allowed even in a collateral proceeding, is want of jurisdiction of either a party or subject matter. So that even admitting the case at bar to be a proceeding collateral to the cases in which the judgments in question were rendered, those judgments are open to attack upon this ground. And as it is plain that the court never had jurisdiction of Louis Otterback on the supposed *alias sci. fa.* the judgment thereon as to him is void.

But, say counsel again, the *return of two nihilis* gave the court jurisdiction; and in support of this Freeman on Executions, Sec. 89, is cited. But reference to that section will show that the author, citing authority, declares that such jurisdiction is acquired upon return *on the return day of the writ*—a vastly different case from that at bar.

The return term of an action at law is the first term after the summons has been legally executed. *Story v. Ware*, 35 Miss., 399.

A judgment by default rendered before the expiration of the time allowed by law for the appearance after service of the summons is void, and, therefore, subject to collateral attack. *France v. Evans*, 90 Mo., 74. See *Dugan v. McGlann*, 60 Ga., 355.

"No question is better settled than that a judgment by default, rendered upon service, within the time the law prescribes, is invalid." *Howard v. Clark*, 43 Mo., 348. See *Johnson v. Baker*, 38 Ill., 98; *Palmer v. McMaster*, 8 Mont., 186.

And, as already pointed out (*ante*, p. 8), the cases relied upon by counsel for the complainants have no application to a case like that at bar. In all those cases there was service, either actual or constructive, upon the defendant, so that the court could claim to have jurisdiction of him, that he was *in court*. Furthermore, in each case his appearance was required after a lapse of a given number of days, while the court was holding the same session at which the summons went out.

The case at bar, however, is radically different. The *alias sci. fa.* was issued in one term and the defendant's appearance was called for at another term. The return term was the term to which the defendant was cited, and the earlier return by the marshal was a nullity. But, what is more important, the court by fixing a term for the defendant's appearance put itself *in vinculis* so that it could not act before the coming of that term; at least, without having the defendant in court. Nothing in the administration of justice could be more monstrous than that a writ should issue and be returned and default taken thereon,

all in the same day, and the party responsible for such a gross performance be allowed to assert it as unassailable. A court thus made the unwitting instrument of a snap judgment and then asked to co-operate in its maintenance after exposure, will be astute to remedy the wrong into which it was led.

4. Assuming, however, the judgments of *flat* on the *sci. fas.* of 1877 to be unassailable in this proceeding, there yet remains an insurmountable difficulty in connection with these *sci. fas.*

"If the plaintiff who sues out a writ of *sci. fa.* to revive a judgment does not proceed upon it within a year and a day it is a discontinuance of it, and the plaintiff must commence by *sci. fa. de novo.*" *Vanderheyden v. Gardner*, 9 Johns., 79; *Bank v. Frederickson*, 2 Miles., 70; *Kenedy v. Smith*, 2 Bay, 414.

"After reviving a judgment by a *scire facias*, if a year and a day pass before execution, the judgment must be again revived by *scire facias* before the execution can be sued out." 2 Arch. Pr., 101; 2 Tidd's Pr., 1009, 1108; *Foster on sci. fa.*, 27.

Of course, this means that a good and sufficient execution must be sued out within the year and a day. In the case at bar, execution was attempted to be sued out within that time—namely, in April, 1878. But the execution was in every case insufficient and invalid. The judgment of *flat* is not printed in full in the record. In each case, as will be seen by reference to the minutes, the entry is: "The plaintiffs * * * pray execution of their judgment against the defendants recovered before the Circuit Court of the District of Columbia," etc., not for the amount of the judgment, but for the amount on payment of which the judgment was to be released, and that, too, *without interest*, which is a most substantial part of the amount sought to be levied. The execution, in each case, is for the amount actually collectible, *including interest*; in each case the judgment to be executed is described as rendered by the Supreme Court of the District of Columbia; and in each of Nos. 507 and 508 the judgment is described as having been recovered by the plaintiff's testator.

It is clear that the supposed *fl. fas.* of 1878 were mere nullities; from which it follows that, no new *sci. fa.* having been sued out, the supposed *sci. fa.* of 1877 has been discontinued and cannot now be asserted for any purpose.

5. Finally, it is said that none of the objections set up to the proceedings in the suits at law can be availed of in this action, because, it is said, this is a collateral proceeding, and the

irregularities pointed out are not such as to make the judgments, etc., void.

To this there are two answers: First, that the judgment of *flat* against Louis Otterback is certainly void, as under the circumstances the court had no jurisdiction to render it; and, second, the irregularities pointed out can be availed of in this action.

It is to be borne in mind throughout that this is an action between the original parties to the suits at law, and that the plaintiffs in those suits are seeking to enforce their judgments with the aid of the court.

It is beside the question to talk of the necessity of pleading limitations. No matter what other courts may have said as to interposing the twelve-year bar to a proceeding on a judgment, this court, in a well-considered case, has explicitly pointed out the difference between limitations in ordinary and the destructive character of the Maryland act as to judgments "above twelve years' standing." *Thompson v. Beveridge*, 3 Mackey, 175.

The cases cited on this point by counsel for complainant have no application to this case.

In *Beames v. Hamilton*, 3 Gill., 275, the defendant attempted to plead the statute to a *sci. fa.* on judgment, and did it so poorly that on *special demurrer*, the court said that the plea was bad in form.

Simpson v. La Salle, 4 McLean, 352, is an Indiana case which gives us no light on the Statute of Limitations of that State.

Elliott v. Knott, 14 Md., 121, was a case of ejectment in which the plaintiff sought to set up against a purchaser at an execution sale who was a stranger to the suit an irregularity in the execution. Limitations were not involved, the irregularity consisting in the issue of a *fl. fa.* after three years without a *sci. fa.*

The great point, which is missed or ignored by counsel, is unaffected by any case cited by them; namely, that we have in this case an exact analogy to a party plaintiff in an execution seeking to maintain title in himself under that execution, notwithstanding irregularity, for which, in law, he is responsible.

The law in such a case is plain and righteous.

"A judgment obtained irregularly, and against law or the practice of the court, is tainted with vices liable to result in its destruction, and for which the party practicing the irregularity is alone responsible. When, on account of these vices, the judgment is vacated, the party guilty of the irregularity seems to be as completely without any means of justification as though no

judgment had ever been entered." Freeman on Judgments, Sec. 104 b.

It is well settled that the plaintiff in execution is deemed to be a purchaser, with notice of all errors and irregularities in the proceedings and judgment in a suit. *Stroud v. Casey*, 25 Tex., 740, and cases cited; *Corwith v. State Bank*, 18 Wis., 560; *Galpin v. Page*, 18 Wall., 373-5.

"The same considerations of policy which secure to an innocent purchaser a valid title, do not exist where the judgment creditor becomes the purchaser, and it would be the height of injustice to allow the party guilty of the irregularity to take advantage of it." *Jackson v. Cadwell*, 1 Cow., 644, 645.

In that case the execution was voidable only, and the action was by a stranger to the original suit, but one whose relation to the plaintiff in execution was such that the court thought him not a *bona fide* purchaser. "The contest here," said Savage, Ch. J., "is virtually between the original parties, and, as between them, I can see no objection to an inquiry into the regularity of the sale."

The case at bar is a much stronger case; the contest is not only virtually, but absolutely, between the original parties, and the complainants are asking the aid of the court that they may get a benefit of their own irregular proceedings.

I have examined every case cited by counsel for the complainants as to the unavailability of an irregular judgment or execution—voidable, but not void; and, as already stated, without exception, they are cases in which the irregularity was sought to be asserted against a stranger. None of the cases is one between the original parties, and one of them—*Durham v. Heaton*, 23 Ill., 264—recognizes the distinction here insisted upon. In that case there had been a sale under an execution defective but not void; and the defect was sought to be relied upon against the execution purchaser, a stranger to the suit; and, said the court: "A party, not the plaintiff in the writ, purchasing the land under the sale made under the writ would hold the land." Page 272.

Another consideration is entitled to great weight in this connection: Should the defendants, even now, by motion apply to the law court to vacate the judgments of *flat*, or the executions thereon, they would be entitled to relief.

"The time within which a motion to quash an execution may be made appears to have no limit. The motion may be made and granted

after the writ has been returned fully executed." Freeman Execs., section 78.

And, as shown by the cases of *Earl v. Wilson* and *Trail v. Snouffer*, above cited, although the *flat on sci. fa.* may issue, when it comes to execution, that which would have served to prevent or vacate the *flat*—as the death of the plaintiff at the time—may yet be relied upon. In the case at bar any one of the executions succeeding the *flat* might be quashed on the ground of irregularity in rendering the judgment of *flat*; and so, if the court should overrule the demurrers, the result would be only to send the defendants to the law court for such purpose.

Surely a court sitting in equity, which is in law the same court as that in which the irregular proceedings were had, will not drive parties to such a course in the face of its knowledge of what that course must result in.

That the *flat* and executions would be set aside, as to Louis Otterback, is clear; and an execution on a joint judgment against two, if void as to one, is void *in toto*. *Herman on Executions*, section 65. See *Jackson v. Hulse*, 6 Mack., 555.

W. WILLOUGHBY for Henry B. Otterback:

The attention of the court is called to the fact that the *flats* which are sought to be enforced were obtained October 4, 1877, while the bill in this case was not filed until October 24, 1889, being a period of more than twelve years. The *flats* are claimed to be supported by executions issued within a year and a day from the date of the *flats*, but on inspecting the executions it will be seen that while these *flats* do not call for interest such executions call for the collection of interest to a very large amount, besides the principal sums, and that these executions do not agree with the *flats* in several other material respects.

I claim therefore that even if such *flats* were properly obtained such executions cannot be regarded as supporting them; that they are not simply voidable but are absolutely void as being issued without authority. In support of this claim, and also as bearing upon the proceedings prior to the *flats*, I ask the court to consider carefully the following authorities:

In *Hastings v. Johnson*, 1 Nev., 613, a sale under an execution which called for interest which the judgment did not authorize was set aside, the court holding it absolutely void. The court say:

"That an execution issued and sale of property made where there is no judgment authorizing it would be utterly void there can be no

doubt, and for the same reason we think an execution and sale for a sum exceeding that actually due upon the judgment would be equally void, because there is no judgment to authorize the collection of the excess for which execution is issued. When the discrepancy between the judgment and the execution is a mere trifle, levy and sale will not be disturbed, because it is said *lex non curat de minimis*; but when the discrepancy is material it cannot be overlooked or disregarded by the courts.

"The protection which the law extends to bona fide purchasers at judicial sales will not avail the purchaser in this case, for we consider the sale not merely voidable, but absolutely void, and in such cases the sale will be set aside, even though the rights of bona fide purchasers have intervened."

In French v. Eaton, 15 N. H., 337, held:

"An extent of an execution upon land will be void if the land be levied upon to satisfy interest upon a judgment." (Syllabus.)

This was a case where the judgment did not bear interest. Held, not merely voidable but void in favor of the plaintiff in the execution.

In Watson v. Fuller, 6 John., 284, the court says: "It is an abuse of the process of the court to make use of the execution to enforce the payment of interest accruing since the judgment." * * * The execution must follow the judgment, and can only be commensurate with it. To levy interest in the given case is to levy more under the judgment than it authorizes."

Kent., J., says such a practice is liable to infinite abuse; such an execution is *without authority*.

In Palmer v. Palmer, 2 Conn., 462, in an ejectment case for land sold under execution, held, that the execution was void and conferred no title because it issued on a judgment in favor of a party in his private capacity, whereas the judgment was in his favor as administrator.

Held, to be an absolute nullity because it did not follow the judgment.

Held, to be a most material variance. The legal effect would be the same as though there were actually two parties.

"An execution in the name of William Barnes, guardian, is not supported by a judgment in the name of Charity, Penelope and Sarah Newsom, by their guardian, William Barnes, and is therefore void." (Syllabus.) Newsom v. Newsom, 4 Ired., 381, N. C. See also Smith v. Knight, 11 Ala., 618.

In Cutler v. Wadsworth, 7 Conn., 6, where an execution varied from the judgment as to

date, it was held that the execution was void. The court says:

"The description of a record is matter of substance, and a mistake in not describing it truly is a fatal error. Undoubtedly the execution in question unsupported by a judgment is void. The sheriff was under no legal obligation to enforce it, nor could he do it without becoming a trespasser. If legal process is awarded erroneously, it is a vindication of the officer who acts under it, but if it issue *without the authority of law* it is utterly void."

The court holds that if the execution does not conform to the judgment as to date it is a *want of authority*. It is not a mere error, but it is absolutely void.

In Davis v. Robinson, 10 Cal., 411, Field, J., says:

"There is no doubt as to the correctness of the position that the execution must be warranted by the judgment. It rests upon and must follow the judgment. If it exceeds the judgment, it has no validity."

Even if such executions were not absolutely void, but merely voidable, we would have the right, I claim, to move to quash them and in such way to entirely do away with their effect.

In Woodcock v. Bennett, 1 Cowen, 711, it was said that where there is a sale upon an irregular execution the execution could be set aside and the defendant could call upon the plaintiff for the money realized upon the sale.

In Walker v. McKnight, 15 B. Mon., 467, it was held that a sale by a sheriff would be set aside if the execution varied substantially from the judgment; that such a sale especially would be void as to the plaintiff in the execution where the purchase is made by him.

The court will note that in this case no rights of a third party have intervened. We are simply asking that a party who has himself procured irregular process shall not have the benefit of such process, and the defendants against whom such process issued shall not be precluded from setting up such irregularity and invalidity.

CHIEF JUSTICE BINGHAM delivered the opinion of the Court:

This cause was submitted to us several months since, and has been the occasion of much investigation and consideration by the court.

The complainants, as judgment creditors, commenced their suit in equity to enforce the payment of three judgments recovered by their testator, Voltaire Willett, against Henry B., and Benjamin L. Otterback, under the firm name of H. B. Otterback & Bro. The bill alleges that these judgments were recovered

in the late Circuit Court of this District on the third day of February, 1863, and, by the way, just one month prior to the Act of Congress creating the present court. On the second day of March, 1863, the last day of the former court, writs of *fieri facias* were issued on said judgments and returned thereafter to this court, *nulla bona*. The bill further alleges that the judgment plaintiff died September 21, 1869, and his death was suggested to the court on December 3, 1874, and complainants, as his executors, on motion, but without notice, substituted, and suit revived. December 14, 1874, other writs of *fieri facias* were issued and returned *nulla bona*. September 1, 1877, writs of *scire facias* were issued and returned served September 5, 1877, as to Henry B. Otterback and "not found" as to Louis Otterback. October 4, 1877, an alias *scire facias* was issued as to said Louis and returned on the same day "not found," and thereafter, on the same day, judgment of *fiat* was entered. April 22, 1878, *fl. fas.* were again issued and returned *nulla bona*. On April 14, 1885, and July 20, 1889, other writs of *fieri facias* were issued, and were also returned *nulla bona*. On the 24th day of October, 1889, the bill in this case was filed. The bill further avers that the judgment defendants were embarrassed when judgments were recovered, and have ever since been insolvent, and that they have no means or property out of which the judgments could be satisfied except moneys now in the custody of the defendant trustees. The bill prays for discovery as to the amount in the hands of the trustees, and that the judgment be decreed to be paid from said funds; that the trustees be restrained from paying anything to said judgment defendants until complainants' claim is satisfied, and for general relief. To this bill the Otterbacks interposed a general demurrer.

The criticisms upon the proceedings before enumerated as being averred in the bill, as summarized in the brief of counsel for the complainants, are, first: The failure to issue a *scire facias* before substitution of the complainants, as executors after his death; secondly, the issuing of a *fieri facias* without a *scire facias*, after such *ex parte revivor* and substitution; third, the misnaming of one of the complainants by calling him "Joseph" instead of "James" in some of the writs and proceedings; fourth, variance between the recitals in the several writs and the judgments of revivor and the wording of original judgments; fifth, the entry of judgment *fiat* before the rule day named in the alias writ of *scire facias*, as to the defendant Louis Otterback, who was not found; sixth, irregu-

larities in the return of "not found," instead of *nihil*; and seventh, irregularities in describing the judgments as having been recovered by the executors, instead of their testator, and as having been recovered in this court instead of in the late Circuit Court of this District.

To all of these criticisms the complainants answer by saying that the defects claimed to exist in the writs and proceedings are only irregularities, or clerical mistakes which have in no way misled the defendants, and which the court might at any time have corrected, if its attention had been called to them in any way; that said writs and proceedings are not void, but at most only voidable, and until set aside by some direct attack they perform all the functions substantially of perfect proceedings, and that, at any rate, the judgment of revivor of 1877, is judgment, and cannot be impeached in this case, even if the original judgments had been "above twelve years' standing," when the writs of *scire facias* were issued, the Statute of Limitations not having been pleaded in defense to same.

If we were to examine each of these criticisms separately and discuss the authorities cited by counsel respectively it would protract this opinion unnecessarily. We have carefully examined these authorities, and think the rule applicable to this case, and applicable to all these conditions is readily deduced from the authorities. This court recently held in Loeber v. Moore, Washington Law Rep., 193, Vol. 19, that where a judgment of *fiat* had been entered by the Circuit Court, and, as was claimed, upon an original judgment which was invalid and void and which had been kept alive from time to time by proceedings which were claimed not to be such as the law required, that the defendant may not attack the original judgment, nor can he attack the proceedings had under the original judgment if they are not void. He cannot attack the original judgment because of irregularity in obtaining it if the record shows that the court had jurisdiction to render it. He cannot attack the proceedings under and upon the judgment if they are simply irregular and voidable, in defense to a writ of *scire facias* or a bill in equity to enforce satisfaction of a *fiat* judgment. In other words, the proceeding in *scire facias* is so far an action that in pleading and proving defenses, all proceedings in the original action anterior to the issuing of the writ of *scire facias* must be regarded as collateral to the latter. Loeber v. Moore, 19 Wash. Law Rep., 193; Dickson v. Wilkinson, 3 Howard, 57, 61.

It follows necessarily in this case that the only

inquiry is whether the court had jurisdiction to enter the judgment of *flat*. The theory of the defense in support of the demurrer is that the Act of Maryland passed in the year 1715, Ch. 23, Sec. 6, providing that, "No bill, bond, judgment, etc., shall be good and pleadable or admitted in evidence against any person or persons of this province after the principal debtor and creditor have been both dead twelve years or the debt or *thing in action* above twelve years' standing," etc., applies. In *Diggs v. Eliason*, 4 Cranch, C. C., 619, the late Circuit Court of this District held that the expression "twelve years' standing" as used in this statute and applied to judgments means twelve years' standing without any proceeding towards enforcing payment. In *Horsey v. Beveridge*, 4 Mackey, 291, this court decided that "Execution may issue on a judgment of this court at any time before the expiration of twelve years from the date of the last execution."

An examination of the record shows that there was not a period of twelve years intervening without any proceeding towards enforcing payment at any time after the rendition of the judgment in 1863. Nor is this claimed by the defendants. But it is claimed by the defendants that the proceedings are all and severally so informal and defective as to render them mere nullities, and therefore they cannot be urged to prevent the force and effect of the statute. But, we do not find that the defects complained of are such as render the proceedings void; and holding that in this case, we must regard such proceedings occurring before the commencement of this action as valid, and *order the demurrer to the bill overruled and the cause remanded to the Equity Court for further proceedings.*

THE COURTS.

Supreme Court of the District of Columbia.

AT LAW—New Suits.

March 8, 1892.

32685. *R. E. L. Yellott et al. v. E. R. Reynolds et al.* Note, \$200. Pliffs. atty., W. A. Johnston.

March 9.

32686. *The Singer Mfg. Co. v. Jennie Humphries et al.* Replevin. Pliffs. atty., S. C. Mills.

32687. *F. X. Hooper v. A. S. Taylor.* Note, \$200. Pliffs. attys., Morris & Hamilton.

32688. *Bridget Irwin et al. v. E. S. Wescott et al.*

32689. *Daniel Birtwell v. Lionel D. Saxton.* Note, \$300. Pliffs. atty., L. Cabell Williamson.

32690. *C. Engels Sons v. W. E. Prall.* Notes, \$996.97. Pliffs. attys., Cole & Cole.

32691. *B. H. Robertson v. G. L. Magruder.* Account, \$360. Pliffs. atty., Frank W. Hackett.

32692. *S. Gugenheimer et al. v. Frank Hofa.* Account, \$103.40. Pliffs. atty., Wm. F. Mattingly.

32693. *Augustus Dunbar et al. v. Brennan Fauntroy et al.* Ejectment. Pliffs. attys., Ridgle & Davis.

32694. *Simon Cohen & Son v. John J. Costinett.* Account, \$198.54. Pliffs. atty., C. A. Brandenburg.

March 10.

32695. *Henry Coats et ex. v. The Anacostia & Potomac River RR. Co.* Damages, \$5,000. Pliffs. atty., E. M. Hewlett. Defts. attys., Edwards & Barnard.

32696. *E. J. Purcell v. E. L. White, Admr. of Maria J. Clark, deceased.* Pliffs. atty., M. J. Colbert.

32697. *Employer's Liability Assurance Corporation, Limited, v. W. E. Prall.* Account, \$170. Pliffs. atty., C. A. Brandenburg.

32698. *Jno. F. West et al. v. Jno. E. Brenner, Appeal.* Defts. atty., E. H. Thomas.

March 11.

32699. *Averill & Jenkins v. William Straus et al.* Account, \$375. Pliffs. atty., John Ridout.

32700. *House & Herrman v. The District of Columbia and the Treasury of the United States.* Certiorari. Pliffs. attys., Birney & Birney.

32701. *Geo. F. Rider v. The District of Columbia and the Treasurer of the United States.* Certiorari. Pliffs. attys., Birney & Birney.

32702. *Caroline E. Harvey v. The District of Columbia.* Certiorari. Pliffs. attys., Birney & Birney.

32703. *Elizabeth M. Ricker v. the District of Columbia.* Certiorari. Pliffs. attys., Birney & Birney.

32704. *Henry J. Heinz et al. (trading as a corporation) v. F. Bitter & Son.* Note and account, \$322.17.

32705. *Harris & Shafer v. H. C. Huntemann.* Note, \$585. Pliffs. atty., C. C. Tucker.

March 12.

32706. *Otto G. Simonson v. Jno. W. Phillips.* Pliffs. atty., Rutledge Willson.

32707. *Frank E. Patterson v. Jno. J. Meading.* Note, \$600. Pliffs. atty., S. H. Lamar.

33708. *W. A. Shaw et al. v. C. C. Lefler.* Notes, \$568.21. Pliffs. atty., Thos. H. Callan.

32709. *Jonas Heyman v. Jas. Hughes.* Damages, \$500. Pliffs. atty., L. Tobriner.

32710. *The Pittsburgh Bridge Co. (a corporation) v. James B. Halliday et al.* Account, \$2,009. Pliffs. attys., Taylor & Payne.

32711. *Sarah E. Nolan v. Wash. Nailor.* Damages, \$20,000. Pliffs. atty., A. B. Duvall.

32712. *F. X. Hooper v. Henry James.* Note, \$300. Pliffs. attys., D. E. Fox and W. George Weld.

March 14.

32713. *F. X. Hooper v. Anderson & Co.* Notes, \$373.24. Pliffs. attys., D. E. Fox, W. Geo. Weld.

32714. The Live Oak Distillery Co. v. Ann Dunn et al. Account, \$9,205.43. Plffs. attys., Birney & Birney.
32715. Reynolds, Welch & Co. v. Jno. G. Haisland, alias J. G. Haisland. Note, \$133.37. Plffs. atty., Morgan H. Beach.
32716. Whitfield M. McKinlay v. Whitfield Jackson et al. Judgment of Justice Evans, \$93.95. Plffs. atty., J. H. Smith.
32717. Douglas B. McCary to the use of Whitfield McKinlay and Whitfield Jackson et al. Judgment of Justice Evans, \$91.95. Plffs. atty., J. H. Smith.
32718. Bartow L. Walker v. Mt. Sinai M. E. Church. Plea of title. Plffs. atty., F. H. Mackey.
32719. Jas. H. Taylor et al. v. Hannah M. Bartlett. Account, \$150. Plffs. atty., Jas. G. Payne.
32720. Frederick Springmann v. Wm. Gifford. Plffs. atty., Thos. M. Fields.
- March 15.
32721. Isaac S. Lyon v. Thos. W. Stewart. Note, \$200. Plffs. atty., I. S. Lyon.
32722. The Railway Age Publishing Co. v. Samuel C. Hill. Note, \$150. Plffs. attys., Abert & Warner.
32723. A. D. Puffer & Sons v. Thos. L. Crowley. Account, \$225. Plffs. attys., Abert & Warner.
32724. E. S. Jaffrey & Co. v. B. J. Behrend & Son. Account, \$609.86. Plffs. atty., Rodolphe Claughton.
32725. C. C. Helpine v. Lester A. Barr et al., acct., \$181.89. Plffs. attys., C. C. Tucker and F. H. Mackey.
32726. L. D. Lorentz v. Daniel Ballauf. Replevin. Plffs. attys., Whitaker & Prevost. Defts. atty., Alex. Porter Morse.
32727. R. S. Craig, by next friend, Saml. C. Mills v. Marx Kaufmann. Damages, \$25,000. Plffs. atty., W. H. Sholes.
- March 16.
32728. The Gottechalks Co. of Baltimore, Md., v. Ann Dunn et al. Acct., \$7,181.01. Plffs. atty., S. T. Thomas.
32729. Johnathan H. Gray v. Thos. S. Tucker et al. Note, \$525. Plffs. atty., Wm. W. Boarman.
32730. Geo. A. Smith v. Wm. P. Davis et al. Notes, \$209.74. Plffs. attys., A. S. Taylor and Rolston & Siddons.
32731. The U. S. Trust Co. v. B. J. Edwards et al. Judgment of Justice Brady. \$50. Plffs. atty., C. A. Brandenberg.
32732. James A. George v. Pullmans Palace Car Co. Damages, \$5,060.45. Plffs. atty., John Lyon.
32733. Jno. W. Murray et al. v. The W. & G. RR. Co. Damages, \$20,000. Plffs. attys., Carrington & Williamson.
32734. Nellie Lucas v. Rebecca Ware. Replevin. Plffs. atty., H. W. Sohon.
32735. Francis P. Bronaugh, adm'x of Hamilton Bronaugh, deceased, v. The W. & G. RR. Co. Damages, \$10,000. Plffs. attys., Gordon & Gordon.
32736. Beinecke & Co. v. W. E. Prall. Note, \$392.50. Plffs. atty., C. Carrington.
- March 17.
32737. A. Depue & Son v. Gunson & Justice. Judgment of Justice Strider, \$51.95.
32738. The U. S. Electric Motor Co. v. Jno. Lyon. Account, \$665. Plffs. atty., Ward Thoron.
32739. Eliza Cooms McCeny et al., v. James A. Main. Ejectment. Plffs. atty., R. Ross Perry.
32740. Eliza Cooms McCeny et al., v. Lewis C. Main. Ejectment. Plffs. atty., R. Ross Perry.
32741. Remington Bros. v. Higdon & Higdon. Account, \$158.45. Plffs. attys., J. J. Johnson and H. C. Stewart, Jr.
32742. Julius Lansburgh v. Thos. W. Buckey. Note, \$160.53. Plffs. atty., H. F. Woodard.
32743. John T. Patterson et ux. v. The W. & G. Rwy. Co. Damages, \$20,000. Plffs. attys., A. A. Lipscomb and Chapin Brown.
32744. Wm. J. Duckrell v. W. S. Hoge. Damages, \$10,000. Plffs. attys., Lipscomb & Woodard.
- March 18.
32745. William J. Duckrell et ux. v. William S. Hoge. Damages, \$10,000. Plffs. attys., Lipscomb & Woodard.
32746. Augustino Montegriffo v. B. A. Fowler & Bro. Appeal. Defts. atty., E. H. Thomas.
32747. W. Livingston Bruen v. Albert E. Burche et al. Judgment of Justice Bundy, \$25. Plffs. atty., C. A. Brandenburg.
32748. W. C. Drury & Co. v. Ferd. Bitter. Note and account, \$1,175.60. Plffs. attys., Edwards & Barnard.
32749. The Jno. Ryan Co. of Baltimore, Md., v. Herman J. Martin, Replevin. Plffs. attys., H. W. Garnett and D. S. Mackall.
32750. S. T. and L. Nickerson v. M. N. Falk. Note and account, \$869. Plffs. attys., H. W. Garnett and D. S. Mackall.
32751. The German-American Bank of Rochester, N. Y., v. C. O. Weston. Note, \$226.66. Plffs. attys., H. W. Garnett and D. S. Mackall.
- March 19.
32752. Marschall, Spellman & Co. v. Mauss & Houser. Note, \$225.88. Plffs. atty., W. H. Sholes.
- March 21.
32753. Armistead, Peter, jr., v. The District of Columbia. Certiorari. Plffs. atty., Jno. Ridout.
32754. Jno. Clayton v. The District of Columbia. Damages, \$250.90. Plffs. atty., P. B. Stilson.
32755. Charles Walter v. Romeo P. Tomassék et al. Note, \$201.95. Plffs. atty., C. A. Walter.
32756. Farmer H. Hawkins v. W. A. Gray. Note, \$1,240.80. Plffs. atty., R. A. Burton.
32757. Samuel E. Lewis v. Wm. Morgan. Rent account, \$249.99. Plffs. atty., Wm. F. Mattingly.
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- IN EQUITY.—New Suits.**
- March 8.
13767. Henry F. Meyer v. Jno. S. Belt, Specific performance. Com. sol., M. N. Richardson.
13768. Charles Gambrill v. Michael Leonard et al. To enforce creditors' claim against sub lots 69 and 70, sq. 28. Com. sol., D. O'C. Callaghan et al.
13769. William Colbert et al. v. Annie Burkey et al. To sell real estate. Com. sol., M. J. Colbert.
- March 9.
13770. S. C. Justice v. J. O. Johnson et al. To dissolve partnership and for account. Com. sol., A. A. Lipscomb et al. Defts. sol., R. B. B. Chnew.

13771. Martha Wilkins alleged lunatic. Upon petition Commissioners D. C. De lunatico inquirendo. Com. sol., Geo C. Hazelton.

13772. S. J. Southard alleged lunatic. Upon petition Commissioners D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazelton.

March 9.

13773. United States Trust Co. v. Albert A. Ashe et al. Creditors' bill. Com. sol., C. A. Brandenburg.

March 10.

13774. Thos. J. Shea v. Ival Donohue. To appoint new trustee. Com. sol., M. I. Colbert.

13775. Cora H. Stewart v. Thobias W. Stewart et al. Creditors' bill. Com. sol., Carusi & Mulker.

March 11.

13776. Aaron Strauss v. J. M. Chadsey et al. Judgment to Creditors' bill. Com. sol., D. S. Mackall.

13777. Wm. F. Mackay v. Geo. W. Rushenberger. To dissolve partnership. Com. sol., F. H. Mackey.

13778. Wm. H. Kaiser v. Frederick J. Kaiser et al. For partition—lot 9, sq. 119, and lot 3, and pt. of 2, sq. 106. Com. sol., C. A. Brandenburg.

March 12.

13779. Lydia J. Shaw v. John H. Shaw. For divorce. Com. sol., W. P. Williamson.

13780. Leoveniah Cramer v. John A. Baker. To enjoin collection of judgment. Com. sol., Jno. Ridout.

13781. Wm. D. Hughes et al. v. Annie E. Burke et al. Creditors' bill. Com. sol., S. T. Thomas. Defte. sol., J. H. Lichliter.

13782. Lilly E. Allen v. Johnson Allen. For divorce. Com. sol., E. B. Hay.

March 14.

13783. Alice V. Cornish v. James E. Cornish. For divorce. Com. sol., Howard P. Okie.

13784. Annie S. Hardesty v. John Cammack. For account. Com. sol., J. C. Marbury. Defte. sol., W. H. Dennis.

March 15.

14785. Emma Galutzo, alleged lunatic, upon petition Comms. D. C. De lunatico inquirendo. Com. sol., C. Hazelton.

March 16.

13786. Benedict Thomas et al., v. Joseph Thomas. Com. sol., Woodbury Wheeler; deft. sol., L. Cabell Williamson.

13787. George C. Montgomery et al. v. Allen C. Clark et al. Com. sol., J. H. Ralston.

March 17.

13788. United States Trust Company v. Clark et al. Creditors' bill. Com. sol., C. A. Brandenburg.

13789. Thomas A. Ryan. To change name. Com. sol., E. M. Hewlett.

13790. Mary P. Nicholson v. Henry T. Nicholson. For divorce. Com. sol., W. W. Flemming.

13791. Whitefield McKinlay v. William L. Freeman et al. Judgment creditors' bill. Com. sol., Jas. H. Smith; defts. sol., C. A. Brandenburg.

March 18.

13792. Lisle S. Lipscomb v. Frank E. Watrous et al. For specific performance. Com. sol., A. A. Lipscomb and H. F. Woodard.

13793. Fenton Metallic Manufacturing Co. v. Charles E. Birckhead et al. For account and injunction. Com. sol., Charles E. Foster.

13794. Southwick Guthrie v. Wm. A. Stewart et al. Creditors' bill. Com. sol., D. S. Mackall. March 19.

13795. Clara J. Veitch v. Albon N. Meeker et al. For assignment in lieu of dower. Com. sol., Belva A. Lockwood.

13796. Matthew E. Cook v. Ellen C. Wight. To enforce mechanics' lien. Com. sol., W. P. Williamson.

March 21.

13797. Wm. Livingston Bruen v. Albert E. C. Burrough et al. Creditors' bill. Com. sol., Clarence A. Brandenburg.

13798. Eliza Morehead. Alleged lunatic upon petition Commissioners D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazelton.

13799. Henry Thomas. Alleged lunatic upon petition Commissioners D. C. De lunatico inquirendo. Com. sol., U. S. Atty. for District of Columbia.

13800. Nathan King. Alleged lunatic upon petition Commissioners D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazelton.

13801. Estate of Jedediah Baxter. Upon petition of Nehemiah L. Baxter et al. To appoint trustee. Com. sol., R. D. Mussey.

13802. Louisa Harbaugh v. Louis Harbaugh. For divorce. Com. sol., S. H. Lewis.

March 22.

13803. John H. Walter et al. Wm. G. Davis. Specific Performance. Com. sol., Jno. Ridout.

13805. Ida Mary Stanton, guardian of Horace Baxter Stanton v. Horace Baxter Stanton et al. To sell lot 90 and part original lot 11 sq. 194 and 195. Com. sol., Jas. F. Hood.

Legal Notices.

FIRST INSERTION.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

March 18th, 1892.

In the case of The Washington Loan & Trust Co., Administrator of ANDREW McCALLUM, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 15th day of April, A. D. 1892, at 1 o'clock p. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched, otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star previous to the said day.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
12 No. 4338. Admin. Doc. 16. John B. Larner, Proctor

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters Testamentary on the personal estate of MARGARETHA VOLK, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 11th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 11th day of March, 1892.
GEO. C. WALKER,
12 Julius A. Maedel, Proctor. 514 12th St. n. w.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of SAMUEL THOMPSON, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of March, 1892.

JOHN A. BARTHEL,
221 1/2 St. n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of WILLIAM MEECER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 12th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of March, 1892.

REBECCA D. MERCER,

Care of J. THOMAS SOTHORON,

12 J. Thos. Sothoron, Proctor. 412 5th St. n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters of Administration on the personal estate of MARGARET C. BARBER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of March, 1892.

JOHN A. BARBER;
12 Wm. L. Dunlop, Proctor. 3241 N St. n. w.

RATCLIFFE, DARR & CO., AUCTIONEERS.**TRUSTEE'S SALE OF VERY DESIRABLE IMPROVED PROPERTIES, BEING NO. 1745 JOHNSON AVE., AND NO. 618 SIXTH ST., S. W., WASHINGTON, D. C.**

Under and by virtue of a decree passed on the 3rd day of March, 1892, in Equity caus: No. 13,472, docket No. 32, of the Supreme Court of the District of Columbia, wherein William R. Shaw is complainant and Thomas M. Cassell et al. are defendants, the undersigned will offer for sale to the highest bidder on TUESDAY, THE 5TH DAY OF APRIL, A. D. 1892, AT 4:30 P. M., in front of the premises, No. 1745 Johnson Avenue, the following real property, to wit: all that piece or parcel of land and premises lying and being in the city of Washington and District of Columbia, known and distinguished as lot S. 44 of Square No. 207. The lot fronts 20 feet on Johnson Ave. by 134 feet 3 inches in depth, together with the improvements, consisting of a two story brick residence with a one story brick stable in the rear; and thereafter on THURSDAY, THE 7TH DAY OF APRIL, AT 4:30 O'CLOCK, P. M., they will offer for sale under said decree in front of the premises, No. 618 6th Street, S. W., the following real property: lot G. Square No. 467—said lot faces 18 feet 2 inches on 6th Street by a depth of 66 feet 3 inches, and improved by a three story dwelling, in the city of Washington and District of Columbia. Terms of sale: one-third cash, and the balance in two equal installments in one and two years, with interest from day of sale, at the rate of six per cent. per annum, payable semi-annually, to be secured by the promissory notes of the purchaser, and deed of trust on the property, or all cash at the purchaser's option.

A deposit of \$200 will be required of the purchaser at the time of sale; all conveyancing and recording at the cost of the purchaser. If the terms of sale be not complied with within ten days from time of sale the Trustees reserve the right to resell the property at the risk and cost of the defaulting purchaser.

FRANK T. BROWNING,
416 5th St. N. W.
ANDREW A. LIPSCOMB,
Over Mertz's Drug Store, 11th & F Sts. N. W.
Trustees.

12-2t.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of CHARLES F. MOSEBY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of March, 1892.

her
MARY S. M. NASH,
mark

12 Gordon & Gordon, Proctors. 2713 Dumbarton ave.

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of GEORGE W. KNOX, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 18th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of March, 1892.

WILLIAM S. KNOX,
201 B St., n. w.

This is to Give Notice

That the subscriber, of Washington City hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of JOHN COX, late of Portsmouth, Virginia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 5th day of October, 1892, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of March, 1892.

REESE H. VOORHEES,
1406 G St., n. w.
No. 4612. Ad. Doc. 17.

This is to Give Notice

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphan's Court business, Letters Testamentary on the personal estate of EDWARD TEMPLE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 21st day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 21st day of March, 1892.

MARY J. G. TEMPLE,
MAHLON ASHFORD.

12 John Ridout, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

March 18th, 1892.

In the case of Thomas H. Tolson, Administrator of FRANCIS A. TOLSON, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 15th day of April, A. D. 1892, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
12 No. 4157. Admir. Docket 16. Randall Hagner, Proctor.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**
Holding a Special Term for Orphans' Court Business.

March 18th, 1892.

In the case of Robert H. G. Dyson, Executor of TOBIAS C. JOHNSON, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 15th day of April, A. D. 1892, at one o'clock p. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test:

L. P. WRIGHT,
Register of Wills for the District of Columbia.
12 No. 4285. Admn. Doc. 16. Chas. H. Cragin, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

March 18th, 1892.

In the case of John F. Cook, Executor of ISAAC LANDIC, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 15th day of April, A. D. 1892, at one o'clock p. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test:

L. P. WRIGHT,
Register of Wills for the District of Columbia.
12 No. 4172. Admn. Doc. 16. Calderon Carlisle, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

March 23rd, 1892.

In the matter of the estate of ELIZABETH THAWAITES, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased, has this day been made by George Thawaites, husband surviving, who prays that said Letters may be granted to the Washington Loan & Trust Co.

All persons interested are hereby notified to appear in this Court on Friday, the 15th day of April next, at one o'clock p. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER and Evening Star previous to the said day.

By the Court.

A. B. HAGNER, Justice.
Test:
Register of Wills for the District of Columbia.
12 No. 4882. Admn. Doc. 17. John B. Larner, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

March 18th 1892.

In the matter of the Estate of FEARNLEIGH LEWIS MONTAGUE, otherwise known as ALMA WOODLEIGH, late of this District deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration on the Estate of the said deceased, has this day been made by William H. Veerhoff, a creditor.

All persons interested are hereby notified to appear in this Court on Friday, the 15th day of April, next, at 1 o'clock p. m., to show cause why Letters of Administration on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Washington Post previous to the said day.

By the Court.

A. B. HAGNER, Justice.
Test:
Register of Wills for the District of Columbia.
12 No. 4873. Ad. Doc. 17.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**
Holding a Special Term for Orphans' Court Business.

March 18th, 1892.

In the matter of the Estate of HENRY R. CRONIE, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased, has this day been made by Mary J. Cronie.

All persons interested are hereby notified to appear in this Court on Friday, the 15th day of April next, at 1 o'clock p. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star previous to the said day.

By the Court.

A. B. HAGNER, Justice.

Test:
Register of Wills for the District of Columbia.
12 No. 4885. Ad. Doc. 17.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 21st day of March, 1892.

Mary L. Davis
vs.
Samuel A. Davis.

No. 18,504. Eq. Docket 83.

On motion of the plaintiff, by Mr. C. Maurice Smith, her solicitor, it is ordered that the defendant, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for a divorce *a vinculo matrimonii*, on the ground of desertion and abandonment for more than two years before the filing of the bill.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
12 By M. A. Clancy, Asst. Clerk.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of HARRY J. REIDY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 27th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of February, 1892.

JOHN F. KELLY,
8 G Street, n. w.

SECOND INSERTION.**This is to Give Notice**

That the subscribers of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters Testamentary on the personal estate of BERNARD FITZPATRICK, late of the District of Columbia, deceased.

All persons having claims against the said deceased, are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 11th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 11th day of March, 1892.
MARY FITZPATRICK,
1338 14th St. n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

March 11th, 1892.

In the case of George Voneiff, Executor of CONRAD SENKIND, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 15th day of April, A. D. 1892, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test:

L. P. WRIGHT,
Register of Wills for the District of Columbia.
11 No. 4826. Ad. Doc. 16.

C. A. Walter, Proctor.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term thereof as a District Court of the
United States for said District.

Filed March 12, 1892. District Court No. 369.

In the matter of the Condemnation of 7100 square feet of land
for the enlargement of the yard of the Public School Building at
Brightwood, D. C.

Upon consideration of the petition filed in this case by John W. Douglass, John W. Ross and William T. Rossell, Commissioners of the District of Columbia, seeking the condemnation of 7100 square feet of land, belonging to the heirs of Betsy Butler, deceased, for the purpose of enlarging the yard of the public school building at Brightwood, D. C.

Ordered, that GEORGE BUTLER, ELLEN BUTLER, ELIZA PROCTOR, JANE BALL, JOHN BUTLER, LEWIS BUTLER, and all other persons owning or claiming any interest in said property under Betsy Butler, or having any interest therein, as occupants or otherwise, be, and they are hereby required to appear in this Court and make answer to the said petition on or before the 30th day of March, 1892, at which time the court will proceed with the condemnation of said land.

Provided that the Marshal of the United States for said District, serve a copy of this order on such of the above named persons as may be found in this District at least seven days before the said 30th day of March, 1892.

And provided further that a copy of this order be published in the Evening Star newspaper at least six times, and in the Washington Law Reporter twice before said day.

E. F. BINGHAM, Chief Justice.

True copy. Test: J. R. Young, Clerk.
By L. P. Williams, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 10th day of March, 1892.

Ella M. Abbott

vs. { No. 13,699. Eq. Docket 33.

William Edgar Abbott, } On motion of the plaintiff, by Mr. Simon Wolf, her solicitor, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce from the bond of marriage, on the ground of willful desertion and abandonment for the full and uninterrupted space of two years and over of complainant by the defendant.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.

11 By M. A. Clancy, Asst. Clerk.
[Filed March 10, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 16th day of March, 1892.

William Mayse

vs. { Margaret L. Gaddis and No. 13,702. Eq. Docket 33.
William Gaddis.

On motion of the plaintiff, by Mr. Franklin H. Mackey, his solicitor, it is ordered that the defendants, MARGARET L. GADDIS and WILLIAM GADDIS, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to remove a cloud from the title of plaintiff to original lot twenty (20) in square ten hundred and fifty-eight (1058) in the city of Washington, District of Columbia.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.

11 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 16th day of March, 1892.

William Mayse } vs. { No. 13,710. Eq. Docket 33.

Charles J. Meister. On motion of the plaintiff, by Mr. Franklin H. Mackey, his solicitor, it is ordered that the defendant, CHARLES J. MEISTER, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to remove a cloud from the title of the plaintiff to original lots one (1), two (2), seventeen (17) and eighteen (18) in square ten hundred and sixty-nine (1069) in the city of Washington, District of Columbia.

By the Court. A. B. HAGNER, Justice, &c.

True copy. Test: J. R. Young, Clerk, &c.

11 By M. A. Clancy, Asst. Clerk.

Legal Notices

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

March 11th, 1892.

In the matter of the Estate of ISABELLA STEER, late of Washington, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration c. t. a. on the Estate of the said deceased, has this day been made by Edward and Laura Steer, now Lambert.

All persons interested are hereby notified to appear in this Court on Friday, the 15th day of April next, at 10 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration c. t. a. on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Washington Post previous to the said day.

By the Court.

A. B. HAGNER, Justice.

Test:

L. P. WRIGHT,

Register of Wills for the District of Columbia.
11 No. 3557. A. D. Doc. 15. J. R. McMillan, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

March 5th, 1892.

In the matter of the Estate of ANN CLANCY, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by George P. Zurhorst and Michael McCormick.

All persons interested are hereby notified to appear in this Court on Friday, the 8th day of April next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER and Washington Post, previous to the said day.

By the Court.

A. B. HAGNER, Justice.

Test:

L. P. WRIGHT,

Register of Wills for the District of Columbia.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

March 11th, 1892.

In the matter of the Estate of JOHN EDWIN MASON, late of Washington, D. C., deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Henry M. Baker.

All persons interested are hereby notified to appear in this Court on the 15th day of April next, at one o'clock p. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Washington Post previous to the said day.

By the Court.

A. B. HAGNER, Justice.

Test:

L. P. WRIGHT,

Register of Wills for the District of Columbia.

No. 488 Ad. Doc. 17.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

March 12, 1892.

In the matter of the Estate of CLEMENT STROBL, sometimes known and acting as FRANK FORSTER, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by William D. Judge.

All persons interested are hereby notified to appear in this Court on the 15th day of April next, at one o'clock P. M., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Washington Post previous to the said day.

By the Court.

A. B. HAGNER, Justice.

Test:

L. P. WRIGHT,

Register of Wills for the District of Columbia.

11 No. 4732. Ad. Doc. 17. J. Guilford White, Proctor.

Legal Notices.**This is to Give Notice**

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters of Administration c. t. a. on the personal estate of ELIZABETH A. TOWNSEND, otherwise known as OLLIE ASTOR, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of March, 1892.

RICHARD SYLVESTER,
Property Clerk,

11 C. Maurice Smith, Proctor. Police Headquarters.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

March 11th, 1892.

In the case of Dorsey Clagett and Wm. Ward Mohun. Executors of WILLIE B. CLAGETT, deceased, the Executors aforesaid have, with the approval of the Court, appointed Friday, the 8th day of April, A. D. 1892, at 1 o'clock p.m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter, previous to the said day.

Test:

L. P. WRIGHT,
Register of Wills for the District of Columbia.

11 No. 4249. Ad. Doc. 16.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Arthur P. West et al.)

vs.

In Equity. No. 853, Rules 5.

Wm. D. B w e et al.)

The trustee, Frederick L. Siddons, having reported to the Court the sale for \$150 cash to E. P. Berry of the lot of ground referred to in the decree appointing him trustee, the same being part of lot 75 in square 18 in "Old Georgetown," fronting about 37 feet 9 inches on an alley 30 feet wide known as West Alley and running back with that width about 75 feet to the north line of said lot, and the same having been considered, it is, by the Court, this 12th day of March, A. D. 1892, ordered, adjudged and decreed that said sale be ratified and confirmed unless cause to the contrary be shown on or before the eighteenth day of April, A. D. 1892.

Provided that a copy of this decree be published in the Washington Law Reporter once in each of three (3) successive weeks prior to said date.

A. B. HAGNER, Justice.
J. R. Young, Clerk.

* True copy. Test: By M. A. Clancy, Asst. Clerk.

This is to Give Notice

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of SAMUEL STRONG, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscribers, at office of Carus & Miller, 488 La. Ave., on or before the 8th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 8th day of March, 1892.

WILLIAM J. MILLER.
HALBERT E. PAYNE.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration c.t.a. on the personal estate of PATRICK CORCORAN, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 11th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 11th day of March, 1892.

JOHN IMRIE.
184 6th St., s. w.

11 S. T. Thomas, Proctor.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of MARGARET L. HULSE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of March, 1892.

D. WEBSTER PRENTISS,
12 D. O'C. Callaghan, Proctor. 1101 14th St., n. w.

This is to Give Notice

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of ANDREW BRYSON, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 9th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 9th day of March, 1892.

CHARLOTTE M. BRYSON,
A. BRYSON.

11 Blair Lee, Proctor. 1822 Mass. ave., Washington, D. C.

This is to Give Notice

That the subscriber, of Philadelphia, Penna., has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of JOSEPH M. JAYNE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 11th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 11th day of March, 1892.

EBEN C. JAYNE,

11 Wm. G. Johnson, Proctor. 242 Chestnut St., Phila.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

March 11th, 1892.

In the matter of the Estate of HARRIET N. LE CONTE, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Eva Le Conte.

All persons interested are hereby notified to appear in this Court on Friday, the 8th day of April next, at 10 o'clock A. M., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: L. P. WRIGHT.

Register of Wills for the District of Columbia.

11 No. 4796. Ad. Doc. 17. Archibald Young, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

March 11th, 1892.

In the matter of the Estate of GEORGE F. SCHAFER, late of Washington, D. C., deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Minna Schafer.

All persons interested are hereby notified to appear in this Court on Friday, the 8th day of April next, at one o'clock P. M., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Washington Post previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: L. P. WRIGHT.

Register of Wills for the District of Columbia.

11 No. 4879. Ad. Doc. 17. Gordon & Gordon, Proctors.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**
Holding a Special Term for Orphans' Court Business.

March 12th, 1892.

In the case of Albert F. Childs, Frank H. Childs and Mabel I. Childs, Executors of WILLIAM E. CHILDS, deceased, the Executors aforesaid have, with the approval of the Court, appointed Friday, the 15th day of April, A. D. 1892, at 1 o'clock p. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the said Executors will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: L. P. WRIGHT,
11 Register of Wills for the District of Columbia.
No. 4299. Dorsey Claggett, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 11th day of March, 1892.

Cordelia Cantwell, } vs. No. 13.726. Eq. Docket 33.

John O. Cantwell.

On motion of the plaintiff, by Mr. E. B. Hay, her solicitor, it is ordered that the defendant, JOHN O. CANTWELL, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is divorce for willful desertion and abandonment.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
11 By M. A. Clancy, Asst. Clerk.

This is to Give Notice

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters Testamentary on the personal estate of ANNA KEY LAIRD, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 12th day of March, 1892.

MAYHEW PLATER,
3106 N St. n. w.
CHARLES M. MATTHEWS,
11 C. M. & H. S. Matthews, Proctors. 714 15th St., n. w.

THIRD INSERTION.**This is to Give Notice**

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters Testamentary on the personal estate of ANTHONY HYDE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of March, 1892.

ARTHUR T. BRICE, Proctor. THOS. HYDE,
Care of Riggs & Co.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of JANE E. O. RHODES, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 5th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 5th day of March, 1892.

WILLIAM JOSEPH McCUALEY,
10 James Hoban, Proctor. mark
1200 6th St., n. w.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**
Holding a Special Term for Orphans' Court Business.

March 4th, 1892.

In the case of Robert Farnham, Administrator of JANE FARNHAM, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 8th day of April, A. D. 1892, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: L. P. WRIGHT,
10 Register of Wills for the District of Columbia.
No. 4818. Ad. Doc. 16. Henry Wise Garnett, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

March 4th, 1892.

In the case of Chas. C. Glover and Jas. M. Johnston, Executors of GEORGE BANCROFT, deceased, the Executors aforesaid have, with the approval of the Court, appointed Friday, the 8th day of April A. D. 1892, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law again't them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: L. P. WRIGHT,
10 Register of Wills for the District of Columbia.
No. 4257. Ad. Doc. 16.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

March 7th, 1892.

In the matter of the Estate of PHYLENDRA M. STODDER, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Lucina J. Mykel.

All persons interested are hereby notified to appear in this Court on Friday the 8th day of April next, at 1 o'clock p. m., to show cause why the said Will should not be proved and admitted to probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published in the Washington Law Reporter four times previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT,
10 No. 4853. Ad. Doc. 17. Wm. W. Wright, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 5th day of March, 1892.

The Home for Aged Colored People } vs. No. 13.584. Eq.
Ann L. TANEY et al. Docket 33.

On motion of the plaintiff, by Mr. Irving Williamson, its solicitor, it is ordered that the defendants, ANN L. TANEY, JOSEPH A. TANEY, THOMAS H. WHITE, KATE WHITE, JOSEPH A. WHITE, SOPHIE WHITE, EDWARD H. WHITE, SUSAN WHITE, HARRY WHITE, M. JOSEPHINE WHITE, ROSA HARTMAN and J. A. HARTMAN, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to remove cloud from title to lots 2 and 3 in J. and G. W. Hopkin's subdivision of square 110, Washington, D. C., the said defendants being the heirs of Rev. Charles I. White, in whom the title to said lots was at one time vested.

This order to be published in the Washington Law Reporter once a week for three weeks prior to said rule-day.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
10 By M. A. Clancy, Asst. Clerk.

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WASHINGTON, D. C., - - - MARCH 31, 1892

IN this week's issue we present to our readers two interesting cases decided by the Supreme Court of this District.

The Washington Loan and Trust Company, and other like companies, organized under the Act of Congress approved October 1, 1890 (26 Stat., 625), are held to be entitled to become executors, administrators, guardians, or trustees, without giving the usual bond. This provision of the Statute is upon the ground that their manner of organization is such as to render them sufficiently responsible and safe without the bond.

THE decision in Special Term by Mr. Justice Montgomery, in case of *Worthington v. Sylvester*, is a clear statement of an important matter of practice.

CARRIERS—Ejection of a Passenger.—Railroad Co. had advertised to run an excursion on a certain day, giving schedule of fare from various stations. The plaintiff got on board, at a station where no tickets were sold. He paid the conductor more than the excursion rate, for the round trip, and took the conductor's receipt. On the return trip the same conductor demanded a return fare, and on the refusal to pay, the plaintiff was ejected from the train. Held, that plaintiff had complied sufficiently with defendant's regulations to entitle him to the special excursion rate, and the fact that the trespass took place on Sunday, is no defense, since the action was not based on the breach of a contract, but on the violation of a personal right. *Chicago, St. L. & P. R. Co. v. Graham*, 29 N. E. Rep., 170. (Ind. App.)

Supreme Court of the District of Columbia.
 IN SPECIAL TERM.

IRENE WORTHINGTON

v.

RICHARD SYLVESTER.

REPLEVIN—FORTHCOMING BOND.

1. In an action of replevin, where the property has been seized by the Marshal and is in his possession, an order directing the officer to return the property to the defendant, upon his entering into a bond, etc., will be made only in a very exceptional case.
2. An application for such an order should be based upon a petition and affidavits, in which the exceptional character of the case is clearly presented or apparent.
3. The application should be made without unnecessary delay.
4. In such cases so presented, the "inquiry" should and would probably be ordered and entered upon, either upon affidavits, depositions, or oral testimony.

At Law. No. 81,117. Decided December 22, 1890.

Before Mr. Justice MONTGOMERY.

Messrs D. E. CAHILL & F. P. CLOSS for plaintiff.

Mr. JOSEPH SHILLINGTON for defendant.
 THIS is an action of replevin.

The property involved has been seized by the Marshal upon the writ, and is now in his possession.

The defendant applies for an order directing the officer to return the goods to his custody to await the determination of the suit, upon his "entering into bond, with security to be approved by the court, conditioned for the return (to the plaintiff) of the property," in case such return be finally adjudged.

The practice of applying for such an order seems to be resorted to "nowadays" very rarely, although the Statutes of Maryland (Act of 1785, Ch. 80, Sec. 14) provided for such a proceeding. Mackey's Prac. & Pro., 72, Sec. 15, 16; *Montgomery v. Black*, 4 H. & McH., 390; *Cullom v. Berans*, 6 H. & J., 469; *Glenn v. Fowler*, 8 H. & J., 347. And the legal propriety of its invocation here, in proper cases, seems to be recognized. Id., Mackey's Prac. & Pro.; 2 Poe. Pldg. & Prac. at Law, p. 350, Sec. 432; *Douglass v. Douglass*, 21 Wall, 98; *Peterson v. Williams*, Law No. 28,111; *Dyson v. Lattolette*, Law No. 30,891; *Butler v. Sweeney*, Law No. 31,132.

The Statute declares in substance that "the court * * shall have * power * upon a motion for a return of the property * * to inquire into the circumstances and manner of the defendant's obtaining possession of such property, and if * such possession was forcibly or fraud-

ulently obtained or * being in the plaintiff, was got or retained by the defendant, without proper authority or right derived from the plaintiff, then the court may refuse to order a return to the defendant," etc.

The peculiar language of this statute seems to presuppose a *right* theretofore on the part of defendants in replevin to give a bond and retain the possession of the property until the determination of the suit, and probably such was the fact. *Turner v. Reese*, 22 Kansas, 225; *Eads v. Stevens*, 63 Mo., 713; *Gobbe's Law of Replevin*, Sec. 669.

However that may be, our Statute R. S. D. C., secs. 814, 815 and 816, plainly contemplates that the property shall be seized by the marshal, and that when the plaintiff shall have filed the necessary affidavit and undertaking it shall be *delivered* to the plaintiff. Indeed, *here and now* such is the express command of the *writ*.

Conceding, therefore, that the old Maryland statute is still in force, it must now be read in the light of our own statute that is to say, in the view that *now* in the usual, natural, ordinary course of an action of replevin, the property is and will be, when seized, delivered to the plaintiff.

It is, therefore, quite plain that under the law, as we now find it, the court is not expected, and should not be invited, to hear an application for the restoration of the property to the defendant, unless the case be a very exceptional one.

Indeed, it was said as long ago as 1838, by a Maryland writer, and while there was no question of the enforceability of the statute, and no suggestion of its modification by subsequent legislation that "the construction given to this act by a long course of practice, is that unless in the excepted cases, the court *may* order a return; but the application * * * is rarely pressed." *Evans Prac.*, 238.

Plainly the court should not take into consideration nor determine the right of property. *Id.*, 4 H. & McH.; *Id.*, 6 H. & J.

And where it is manifest that each party is understandingly making a bona fide claim to the property in dispute, or to the right to possess it, and there is nothing indicating that the defendant will, if deprived of it, be subjected to serious, unusual, or irreparable injury or inconvenience, something entirely beyond the ordinary, that there is some element of serious hardship connected with it, which the defendant will, and plaintiff will not, suffer by being deprived of the possession, I am strongly of

the opinion that the court should not interfere on motion, but should leave the cause to proceed in the usual, regular, ordinary way.

The statute does not mean that the court shall grant such an order in any case, nor, indeed, that it shall be obligatory upon the court to "inquire into the circumstances," but it manifestly *does* mean that the court *may*, when there is something before him to indicate that the case is very exceptional, and that a great hardship to the defendant is involved, and that no harm can result to the plaintiff by the granting of this order, "inquire into the circumstances," etc., and if such inquiry disclose a proper case, make the order.

For instance, Mr. A. replevies from Mr. B a quantity of household goods—

The defendant comes to the court for such an order as is asked in this case—

He bases his application upon a petition supported by affidavits, in which it is clearly shown that the defendant is a householder, and has a family—

That the property involved is the furniture which he was actually using in his household, and without which his housekeeping must be broken up, and—

That plaintiffs claim is based upon a chattel mortgage, which he claims is unpaid, but which defendant asserts has been fully satisfied.

In such a case no doubt the court should and would grant an order requiring the plaintiff to show cause why the order asked for should not be granted, and meantime directing the Marshal to retain the possession of the property, until the hearing could be had, and if upon the hearing the "inquiry," the facts should be disclosed as above recited; or some other substantially similar case, the order for restoration to the defendant would probably be made.

So, to recapitulate:

First. These applications should be made only in very exceptional cases.

2. When made they should be based on a petition and affidavits, in which the hardship, and exceptional character of the case is clearly presented or apparent.

3. It should be made without unnecessary delay.

In such cases so presented, the "inquiry" should and would probably be ordered and entered upon, either upon affidavits, upon depositions, or upon oral testimony.

The showing in this case falls far short of the cases above instanced, and I must decline to enter upon the "inquiry."

Supreme Court of the United States.

The Home Benefit Association, Plaintiff in Error, v. Henrietta P. Sargent.

Action upon a life insurance policy for \$5,000. The case came up on error to the charge of the Circuit Court as follows: "The only question upon this proof is, did Edward F. Hall commit suicide? If he did, the policy is void. If he died in some other way—by accident or assassination—it would be otherwise. Upon that issue, the burden is upon the defendant to satisfy you by a fair preponderance of proof of the truth of this defense," etc. The plaintiff in the court below recovered judgment for \$5,517.99.

The judgment is affirmed.

Benjamin F. Butler, Plaintiff in Error, v. The National Home for Disabled Volunteer Soldiers.

In error to the Circuit Court of the United States for the District of Massachusetts. Decided March 14, 1892.

Action by the corporation above named, to recover from Butler the sum of \$15,000, with interest. The defendant denied each allegation contained in the declaration, and averred that he had paid the plaintiff in full, and that there had been due accord and satisfaction. He also filed a declaration in set-off, for services as treasurer until the expiration of his term of office as manager.

The court below refused to permit the defendant to introduce evidence offered by him; and judgment was given for the plaintiff (corporation).

The judgment is reversed, with directions to grant a new trial.

Mr. JUSTICE BROWN dissented.

Book Review.

RICE ON EVIDENCE.—The general principles of the law of evidence, with their application to the trial of civil actions at common law, in equity, and under the codes of civil procedure of the several States. In

two volumes. An appendix to Vol. 2 contains the code provisions of New York and California. By FRANK S. RICE, counselor at law.

Published by The Lawyers' Co-operative Publishing Co., Rochester, N. Y., 1892.

This is a new work on the law of evidence. The author names some reasons why, in his opinion, such a work is needed, to take the place of works upon the subject by Best, Phillips, Taylor, Starkie, Greenleaf, and Wharton.

The two volumes contain sixty-six chapters, each relating to a separate branch of the subject of evidence. We have examined the work with some care, found the citations ample, and arrived at the conclusion that practicing lawyers will find it to be a convenient and valuable work of reference.

Supreme Court of the District of Columbia.

IN GENERAL TERM.

IN THE MATTER OF THE APPLICATION OF MARGARET TURLEY FOR APPOINTMENT OF THE WASHINGTON LOAN AND TRUST COMPANY TO BE THE GUARDIAN OF HER ESTATE.

The Washington Loan and Trust Company and other companies, having been organized under the Act of Congress approved October 1, 1890. (26 Stat., 625,) entitled "An act to provide for the incorporation of trust, loan, mortgage, and certain other corporations within the District of Columbia," are entitled to perform the duties specified in sections 31 and 32 of said act, and become executors, administrators, guardians, or trustees, without the execution of a bond.

Orphans' Court. No. 1300. Decided February 1, 1892. Chief Justice BINGHAM and Justices COX and JAMES sitting.

CERTIFIED to the General Term to be heard in the first instance.

Messrs. A. S. WORTHINGTON, J. J. DARLINGTON and JOHN B. LARNER for petitioner.

Messrs. NATHANIEL WILSON and R. ROSS PERRY for other like companies.

CHIEF JUSTICE BINGHAM delivered the opinion of the Court:

There are two appeals from the Orphans' Court to the General Term and the question presented is whether or not these companies can perform the duties specified in sections 31 and 32 of the Act of Congress entitled "An act to provide for the incorporation of trust, loan,

mortgage and certain other corporations within the District of Columbia" approved October 1, 1891, (23 Stat., 625, et seq.) and become executors, administrators, guardians or trustees, without the execution of a bond.

It appears that this and other companies were originally organized under laws of different States, perhaps, and were doing business in the city of Washington at the time of the passage of this Act of Congress. Each of the companies, however, have complied with the provisions of the act of Congress by filing proper vouchers and taking steps required by it in order to enable them to become authorized to do business. The court examined this question upon a former presentation, and we were in doubt as to whether or not these companies, having been previously organized under State laws, and simply coming in and choosing to comply with this law so as to authorize them to proceed under the provisions of this act, ought to be regarded as included in the provisions of Section thirty-one, "that no bond or other collateral security, except as hereinafter stated, shall be required from any trust company *incorporated under this act*," or whether the provisions of this act applied exclusively to the incorporation of companies under it originally. The question is, what are to be regarded as existing corporations under the provisions of this statute so as to be included in Section thirty-one. We have re-examined the question, and all are agreed that there can be no doubt that companies that were existing at the time of the passage of this Act of Congress are described and included in Section thirty-one. A comparison of that section with other sections of the statute we think removes every doubt as to whether they are to be considered as covered by this act. We are of the opinion that they are doing business now only by virtue of their incorporation under this act, and not under any previous incorporation under any State law. When they came under this law they surrendered their powers and authority derived under their original incorporation.

A proper order in accordance with this view of the law may be entered and the matter remanded to the Orphans' Court.

Exchanges.

Among our most valued American exchanges (not to discriminate against others) are the following:

The Federal Reporter, St. Paul, Minnesota.
The Albany Law Journal, Albany, N. Y.

The Legal Intelligencer, and Supplement, Philadelphia, Pa.

The Harvard Law Review, Boston, Mass.

The Chicago Law Journal.

The Chicago Legal News.

The Central Law Journal, St. Louis, Mo.

The American Law Review, St. Louis, Mo.

The Lawyers' General Digest, Rochester, N. Y.

Michigan Law Journal, University of Michigan, Ann Arbor.

The Virginia Law Journal, Richmond.

The Insurance Law Journal, New York.

Pittsburgh Legal Journal, Pittsburgh, Pa.

Lancaster Law Review, Lancaster, Pa.

Weekly Law Bulletin and Ohio Law Journal, Columbus and Cincinnati.

The New York Law Journal, New York.

California Decisions, San Francisco.

The Daily Record, Baltimore, Md.

The Weekly Bulletin, Boston, Mass.

The Court Journal, New York.

The Omaha Mercury, Omaha, Nebraska.

The Legal Adviser, Chicago.

The Internal Revenue Record, New York.

Of our foreign exchanges we take pleasure in favorably noticing the following, which are uniformly excellent:

The Indian Jurist, Madras, India. Agents: Messrs. D. J. Keymer & Co., London, England; Messrs. Thacker, Spink & Co., Calcutta, India.

The Law Journal, London, England.

The Law Students' Journal, London, England.

The Irish Law Times, 53 Upper Sackville Street, Dublin.

The Canadian Law Times, Toronto.

The Western Law Times, Winnipeg, Manitoba.

The Indian Jurist, above mentioned, cites important cases decided by courts in all parts of the British Empire, also many cases decided by courts in the United States. For the Jurist's many good qualities we commend it to the profession.

The following notes of American cases are clipped from The Indian Jurist:

A bequest is a lawful charity in every respect where it is given for an art institute when established, and the income is to be given, in the meantime, in annual prizes for works of art. Almy v. Jones, 12 L. R. A., 414; 17 R. I.; Index HH, 75; 43 Alb. L. J., 477; 21 Atl., 616.

A bequest for an "art institute" is not void for indefiniteness,—especially when a codicil, refers to its distribution of prizes for works "of the fine arts." Almy v. Jones, 12 L. R. A., 414; 17

R. I.; Index HH, 75; 43 Alb. L. J., 477; 21 Atl., 616.

Lack of money of the drawer in a bank to meet a check, where he would have provided for it or paid it if payment had been insisted upon, does not relieve the holder, who has taken it from an endorser on an antecedent debt, from his obligation to present it, or prevent his failure to do so until collection becomes impossible from operating as payment to the amount of the check. *Sweet v. Carroll* (N. Y.)

The legal owners in the actual possession of land can maintain a suit to quiet title against adverse claims which becloud the title and injure the market value of the land. *Kincaid v. McGowan*, 88 Ky., 91; 4 S. W., 802.

The title of the purchaser from the grantee in a deed conveying all the grantor's interest cannot be impaired or clouded by a subsequent written notice to him by the grantor that the latter still has an interest in the land. *Moran v. Somee*, (Mass.), 28 N. E., 152.

One who has deliberately sought a compromise of his claim against a railroad company for personal injuriee, and who has acquiesced in the settlement made on the terms dictated by himself, and who, being able to read, has executed a release in full of all claims without reading it, although given full opportunity to do so, will not be heard to say four years afterward that the settlement was fraudulent and did not include all his claims, especially in the absence of all proof of fraud. *Mateer v. Missouri P. RR. Co.* (Mo.), 16 S. W., 839.

Evidence of a conspiracy between two persons to commit an assault upon another is not essential to the conviction of one who does not strike the blow, when he was present prepared to assist, and did, in fact, interfere by jumping upon the assailed person and seizing him so that it required two men to pull him off. *State v. Gooch* (Mo.), 16 S. W., 892.

A promise, in consideration of permission to insure the life of a person, to pay his wife a sum of money after his death, is on a void consideration, where the promisor has no insurable interest in the life on which the insurance is taken, and therefore cannot be enforced. *Burbage v. Windley* (N. C.), 12 L. R. A., 409; 12 S. E., 839.

An agreement by grocers not to buy any butter from the makers for two years, if a firm shall open a butter store in the place, is void for lack of consideration, where such firm neither pays anything therefor, nor buys any established plant, place of business, or good will. Pac., 208.

Chaplin v. Brown (Iowa), 12 L. R. A., 428; 48 N. W., 1074.

A minor's abstinence from intoxicating liquors and tobacco, and from swearing and playing cards or billiards for money, is a good consideration for a promise by his uncle to pay him a sum of money. *Hamer v. Sidway*, 12 L. R. A., 463; 124 N. Y., 538; 36 N. Y. S. R., 888; 43 Alb. L. J., 429; 27 N. E., 256; *Rev'g 57 Hun*, 229; 42 Alb. L. J., 248; 32 N. Y. S. R., 521; 11 N. Y. Supp., 182.

There is sufficient consideration for a contract to settle litigation between corporations under a patent which both parties supposed to be, but which is not in fact, valid—especially where the contract includes mutual covenants as to the conduct of their business, and i, partly executed before the invalidity of the patent is discovered. *Gloucester I. and G. Co. v. Russia C. Co.* (Mass.), 27 N. E., 1005.

A deed from a husband to his wife, to take the place of a will, so that she may enjoy the property in case of his death, made by reason of his confidence in her and her promise to reconvey at any time he might desire, creates a trust, the violation of which is a constructive fraud; and her promise may be enforced in equity. *Brison v. Brison* (Cal.), 27 Pac., 186.

A contract whereby a husband agrees to pay his divorced wife a specified monthly sum for so long a time as she does not marry again, and shall remain single and unmarried, is not void as in restraint of marriage. *Jones v. Jones* (Colo.), 27 Pac., 85.

An agreement to prevent competition between two corporations in the manufacture of fish glue under a patent, whereby an article nearly worthless is to be converted into one of large value, is not against public policy. *Gloucester I. and G. Co. v. Russia Co.* (Mass.), 27 N. E., 1005.

A contract by which a telephone company agrees to give a telegraph company the exclusive use for a term of years of the telephone for receiving and transmitting telegraph messages is void as against public policy. *State Postal Teleg. Cable Co. v. Delaware and A. Teleg. and Teleph. Co.* (C. C. D. Del.), 10 Ry. and Corp. L. J., 123.

Representations of themselves insufficient to justify setting aside a conveyance may, when coupled with threats made to a sick, weak-minded woman, without advisers or friends, entitle her to such relief, where she has been wronged thereby. *Hick v. Thomas* (Cal.), 27 Pac., 208.

Incipient softening of the brain will not be sufficient ground for setting aside a deed, if the grantor was not so far affected thereby as to unfit him for ordinary business at the time the deed was made, although he afterwards became so. *King v. Humphreys*, 138 Pa., 310; 22 Atl., 19.

A widow suing for the death of her husband by negligence can recover only pecuniary damages; she cannot recover for injuries to feelings and loss of companionship. *Schaub v. Hannibal & St. J. R.R. Co.* (Mo.), 16 S. W., 924.

Damages from publication of a libel cannot be enhanced by the republication thereof by other persons, even if there was a general probability of its republication. *Burt v. Advertiser Newspaper Co.* (Mass.), 28 N. E., 1.

No delivery of a deed, either absolute or conditional, can be made without parting at the time with the possession of it, and with all power and control over it by the grantor for the benefit of the grantee. *Porter v. Woodhouse*, 59 Conn., 568; 22 Atl., 299.

United States Circuit Court, S. D., Georgia.

PHILIP A. SCHLEY

v.

CHARLES H. P. COLLIS.

1. The assent of executors to a specific legacy is presumed where the legatees are in possession under it.
2. He who accepts a benefit under a will must adopt the whole contents of the instrument renouncing every right inconsistent with it.
3. An execution under a judgment against executors as such cannot be levied on land which a life tenant under the will had taken possession with the executor's assent before the judgment was rendered.

Decided June, 1891.

Suit to enjoin the sale of certain property under an execution. *Injunction granted.*

THE FACTS are stated in the opinion.

Mr. Justice SPEER delivered the following opinion:

This case depends upon the following statement of facts: One Anderson was the assignee, under the laws of New York, of the estate of DeLeon, and committed a devastavit thereon. William Schley, late of this district, was the surety upon the assignee's bond, and after the death of Schley, who died testate, Collis, who had been substituted as assignee of this New York estate, brought suit there on the bond of the defaulting assignee and obtained judgment for the sum of \$7,000. The record of the proceedings there was brought to this district, and suit instituted in the Circuit Court, at common

law, against the executors of William Schley, to wit: Thomas M. Norwood and J. W. Schley on their testator's obligation as surety for Anderson, assignee, and a verdict and judgment was rendered against them, as executors. The execution was issued upon that judgment, and levied upon a certain estate known as "Richmond Hill," near Augusta, claimed by the complainant in the bill now before the court, which was duly advertised for sale. This complainant is Philip A. Schley. He was the brother of William Schley and he claims an estate for life in Richmond Hill by virtue of the following item of the will of William Schley:

"Item 5th.—I direct that my old home known as Richmond Hill in Richmond County, Georgia, shall be held by my executors as trustees for, and during the lives of my sister, Mary Ann Haines, and my brother, Philip A. Schley, and during the life of the survivors of them. My purpose being to give them a home as long as they live."

He insists that the estate cannot be lawfully sold for the debts of William Schley, sued to judgment, after the specific legacy made by the clause of the will above quoted was assented to by the executors, and after the property had long been in his possession. He had been in possession of this property long anterior to the death of William Schley; and continuously since then. It is in dispute whether he was there by the express assent of the executors, or as a tenant by sufferance, but in the view the court has of the law that fact is not important to be settled at this time. The rule as announced by the Supreme Court of Georgia in *Parker v. Chambers*, 24 Ga., 527, may be deduced from the following extract from that decision:

"The objection that no evidence was submitted to the jury to prove the assent of the executor to the legacy to Chloe Parker and her children cannot be sustained. The executor allowed the property to remain in the possession of the tenant for life, and that was an assent to the entire legacy. It was in her possession at the death of the testator, and remained there, with the assent of the executor, of course."

In *Jordan v. Thornton*, 7 Ga., 520, the court observes: "It was further claimed before the court below that there was no assent to the legacy by the executor proven, and therefore the plaintiff had no right of action. The court held that assent might be implied from possession; and as there was some evidence of possession, both in the tenant for life and in the plaintiffs after her death, he left that question to the jury. And this view of the case we affirm.

'Assent to a legacy is necessary to enable a legatee to sue at law for his legacy. It is not necessary to show an express assent; it may be implied from facts and circumstances. The assent, if true, must be clear and unambiguous. The possession of the property willed does make out a clear case of assent by implication.' Citing 2 Williams, Executors, 986; Mathews on Presumptions, 287; 3 Preston, Abstr., 2d ed., 145; Richardson v. Gifford, 1 Ad. & El., 52, and other authorities.

For the purposes of this investigation, therefore, the court concludes that the assent to this specific legacy was made by the executors.

And moreover these executors may not be heard to deny this. It is in evidence that one of the executors took a benefit under the will. He thereby received certain property and mortgaged it for his purposes. That mortgage is in evidence, and it concludes the executor, because it contains recitals which show that the executor relied for his title to the mortgaged property upon the will itself; and the authorities seem to be plain and conclusive, that he who accepts a benefit under a will must adopt the whole contents of the instrument, conforming to all its provisions and renouncing every right inconsistent with it. Hainer v. Legion of Honor, 78 Iowa, 245; Eichelberger's Estate, 135 Pa., 160; Scholl's App. (Pa.), 17 Atl. Rep., 206; Vanzant v. Bigham, 76 Ga., 759; Taliaferro v. Day, 82 Va., 79.

All these decisions are comparatively recent, and quite a number of others might be cited in support of that proposition. Indeed the statute law of this State seems to recognize the doctrine without qualification. Ga. Code, Pars. 2456-3162.

This rule would seem especially applicable where the legatee is also an executor, who qualifies solemnly as such, to execute the will and therefore the entire will.

It is clear, therefore, that there was an assent to this specific legacy, and it is equally clear that the assent was distinctly and definitely made with all of its legal effectiveness before the date of judgment, upon which the plaintiff at common law, and defendant here, relies for the enforcement of his rights, and that J. W. Schley, the executor, taking a benefit under the will, may not be heard to deny this. It will follow, therefore, that if the plaintiff in the execution seeks to subject this specific legacy, assented to, as we have seen by the executor, to the payment of his debt, he must adopt a proceeding other than that to which he has resorted. The case of Baker County v. Moreland, 20 Ga., 146,

is, we think, sufficient authority for this proposition. The court, Justice McDonald delivering the opinion, in that case makes this announcement: "This is a proceeding at law to subject to the payment of a judgment against the administrator obtained in 1854, a negro man who had been distributed in 1848 to the claimant, who was one of the heirs-at-law of defendant's estate. If the legal lien of the judgment upon the property had not attached before the distribution it is not subject thereto, unless there was fraud in the distribution. If the suit on which the judgment was rendered was pending at the time of the distribution, the question whether the distribution was made to delay and hinder the creditor in the collection of his debt ought to have been submitted to the jury. But the record discloses no such fact.

There is no legal reason why the legal title of the claimant to the property which had passed to him without fraud nearly six years before should be disturbed by the judgment. This property is unquestionably liable, ratably, to pay the plaintiff's judgment, if the administrator has not assets or is not solvent; but it must be subjected by a different kind of proceeding before a tribunal that can bring all the heirs of the estate before it, and compel those who are solvent to contribute, ratably to the payment. If some are solvent, those who are able to pay may be compelled to contribute to the extent of the assets, if necessary, received by them."

It follows, therefore, we think conclusively, that the plaintiff here has no right to single out this specific legacy and fasten his entire debt upon that. The judgment should have been under the pleading "*de bonis testatoris.*" Wms. Exrs., 1339, 1389; Ga. Code, 3573.

Specified legacies are favorites of the law. When no specific provision is made for the payment of the testator's debts in the will the personal estate is primarily liable. If that is insufficient a lapsed devise may be applied thereto, and if debts still remain specific devises must contribute pro rata. Morse v. Hayden, 82 Me., 227; Riston v. Riston, 2 U. S.; 2 Dall., 215, 1 L. ed., 366.

It appears that this property was returned for taxes by the plaintiff for seventeen or eighteen years, and it appears that the executors were absolutely silent about it, although they were obliged to make an inventory of the real property lying outside of the county of Chatham, in which their executorship was located. We have the testimony of the ordinary of Chatham County that they made no return whatever to this property, and these facts are all material.

On the final trial of this case an interesting question will arise also, upon the proposition of plaintiffs that this creditor could not now subject a specific legacy to the payment of his debt because of an alleged collusion on his part with the executors. He is seeking to enforce the judgment, not against the executors, and there is some evidence which seems to indicate it was understood that the executors would be relieved from the lien of this judgment. We are not prepared to say how important the question is at this time, but if it be true that the executors have been relieved from liability upon this judgment, it may become quite important to the rights of the plaintiff in execution, who is the defendant in this bill. The judgment was taken against the executors as such, and that it is conclusive of assets. This is so held in *Demere v. Scranton*, 8 Ga., 47.

The general estate, as we have seen, would be first liable to pay the debts, and if the executors have permitted a devastavit as to the general estate of William Schley, which would be in the first instance liable for this debt, it would be perhaps quite important to determine whether their individual estate would not be liable rather than a specific legacy which they had assented to.

There are several other questions which have been presented in argument, but the court has indicated enough to justify, in its opinion, the conclusion that this is a case which should be inquired into more carefully upon sworn testimony, taken in the usual manner in equity and upon fuller consideration. It is not one of those cases which should be disposed of on a preliminary hearing.

We think, therefore, that the injunction restraining the sale under execution should be made permanent, and the case proceed as usual in equity.

To this case the Co-operative Law Reports adds the following note:

The doctrine of election as applied to wills:

It is a familiar principle of equity jurisprudence that one who is the recipient of a beneficial interest under a will is assumed to have ratified the other recitals of the instrument and the courts will not allow him to set up a cause of action of his own, however well founded, which has a tendency to defeat or in any way impair the full operation of the will. *Collins v. Woods*, 63 Ill., 285; *Morrison v. Bowman*, 29 Cal., 337; *Thellusson v. Woodford*, 13 Ves. Jr., 209; *Hyde v. Baldwin*, 17 Pick., 303; *Brown v. Ricketts*, 3 Johns. Ch., 553, 1 L. ed., 718; *Cox v.*

Rogers, 77 Pa., 160; *Churchland v. Ireland*, 1 Russ. & M., 259; *Wise v. Rhodes*, 84 Pa., 402.

It is an exceedingly stubborn principle that no one shall be permitted to claim under, and adverse to, a will. "If the testator assumes to dispose of property belonging to a devisee or legatee, the latter, accepting the benefit, must also make good the testator's attempted disposition." *White v. Brocaw*, 14 Ohio St., 339. See also *Havens v. Sackett*, 15 N. Y., 365; *Ditch v. Sennott*, 5 West. Rep., 162, 117 Ill., 362.

In *1 Jarman, Wills*, 386, the doctrine of election is stated thus: "That he who accepts a benefit under a deed or will must adopt the whole contents of the instrument, conforming to all its provisions, and renouncing every right inconsistent with it." See also *Havens v. Sackett* supra.

When a person accepts a legacy, it is an election to stand by the provisions of the will. *Fulton v. Moore*, 25 Pa., 463; *Pennsylvania L. Ins. Co. v. Stokes*, 61 Pa., 136.

Courts of equity adopt the rational exposition of the will, that there is an implied condition that he who accepts a benefit under the instrument shall adopt the whole, conforming to all its provisions, and renouncing every right inconsistent with it. *Story Eq.*, § 1077.

In *Wilbanks v. Wilbanks*, 18 Ill., 19, where a testator devised property belonging to his son to a third person, and in the same will made a devise to the son, it was held that the son must either relinquish his claim to his own property or to the legacy—that the son might elect which he would take, but he would be concluded by his election. This decision was based on the rule established by the authorities, that a devisee could not at the same time take under a will and contrary to it. The doctrine of election again arose in *Brown v. Pitney*, 39 Ill., 468, and after referring to the authorities bearing upon the question, it was held "that the beneficiary under a will cannot insist that the provisions in his favor shall be executed and those to his prejudice annulled—he must accept the instrument in its entirety, or not at all."

AN infant cannot be compelled to answer interrogatories. *Mayor v. Collins*, 24 Q. B. D., 361. Does this principle apply to obtaining an order for discovery of documents? Mr. Baron Pollock, in a case of *Pillers v. Curzon*, which came before him in chambers on the 17th ult., was of opinion that it did not, and that an order for discovery could be made against an infant. *Law Students' Journal*, London.

Privilege of Witnesses in Federal Courts.

In the April number of the Review, Mr. Louis M. Greely discussed the case of *Counselman v. Hitchcock*, which arose through the refusal of a witness, summoned in an investigation under the interstate commerce law, to answer certain questions, on the ground that he would criminate himself by so doing. The District and Circuit Courts for Northern Illinois ruled that the witness must answer, inasmuch as by Section 860 of the Revised Statutes the evidence could not be used against him in any criminal proceeding, and therefore his constitutional rights were not invaded. The question never having arisen in the Supreme Court, Mr. Greely discusses it on principle. He says in substance that the Fifth Amendment guarantees the privilege of a witness against compulsory, self-accusatory evidence; that this privilege may be abrogated by statute if the statute affords the witness complete amnesty as to the crime concerning which he was compelled to testify; but that Section 860 of the Revised Statutes does not do this, inasmuch as it does not prevent sources of evidence disclosed by his evidence from being used against him; the obvious conclusion being that under the present state of the law a witness may refuse to testify if his answer will tend to criminate himself.

It is interesting to note that the case has just been decided on appeal by the Supreme Court of the United States substantially in accordance with the principles above stated. The decisions of the District and Circuit courts are reversed. The court says: "It is a reasonable construction, we think, of the constitutional provision [that "no person * * * shall be compelled in any criminal case to be a witness against himself"] that the witness is protected 'from being compelled to disclose the circumstances of his offence, the sources from which, or the means by which, evidence of its commission, or of his connection with it, may be obtained, or made effectual for his connection, without using his answers as direct admissions against him.' It is quite clear that legislation cannot abridge a constitutional privilege, and that it cannot replace or supply one, at least unless it is so broad as to have the same extent in scope and effect. * * * In view of the constitutional provision, a statutory enactment, to be valid, must afford absolute immunity against future prosecution for the offence to which the question relates."

In the course of the opinion the court considers the provisions of the Massachusetts Con-

stitution, that the witness shall not be "compelled to accuse, or furnish evidence against, himself," and of the New York Constitution, which is in the same language as that of the Fifth Amendment. The conclusion is reached that inasmuch as the general purpose of these constitutional provisions is to prohibit compulsory self-accusatory evidence, "the liberal construction which must be placed upon constitutional provisions for the protection of personal rights would seem to require that the constitutional guaranties, however differently worded, should have, as far as possible, the same interpretation," and that "there is really, in spirit and principle, no distinction arising out of such difference of language."—*Harvard Law Review*, Feb., 1892.

Horse Railways—Right of Way.

A street car has no superior right of way as against a vehicle going along a street that crosses the car track.

In the trial in the lower court the request was refused to charge that the railroad company with its car crossing the street had the right of way and the paramount and superior right in the street.

In sustaining this refusal the court said: "The rule invoked by these requests has its application where the tracks of street railroads are laid in the streets. As the cars must run upon the tracks, and cannot turn out for vehicles drawn by horses, they must have the preference; and such vehicles must, as they can, in a reasonable manner, keep off from the railroad tracks, so as to permit the free and unobstructed passage of the cars. But a railway crossing a street stands upon a different footing. The car has a right to cross, and must cross, the street, and the vehicle has a right to cross, and must cross, the railroad track. Neither has a superior right to the other. The right of each must be exercised with due regard to the right of the other, and the right of each must be exercised in a reasonable and careful manner, so as not unnecessarily to abridge or interfere with the other." *O'Neill v. Dry Dock Co.*, N. Y. Court of Appeals, Dec. 1, 1891. Opinion by Earl, J.—*The Counsellor*. N. Y., Feb., 1892.

STREET RAILWAY—Superior Right of Way.

—A horse street car at a street crossing has no superior right of way as against any vehicle driven upon the street, but it would seem that as regards their track they have a superior right in other places. *O'Neil v. Dry-Dock, E. B. & B. R. Co.*, 29 N. E. Rep., 84. (N. Y. App.)

DEVISE AND BEQUEATH.—Even lawyers do not always remember that the word "devise" is appropriate to realty only, while the word "bequeath" applies to personality. Laymen certainly do not appreciate the distinction. It is difficult to believe that the testator in *Hall v. Hall* realized that when he used a multitude of words appropriate to personality, interlarding them with "devise," "effects," and "wheresoever situate," he did really cause an undivided moiety in real estate, to which he was entitled under the will of his father, to pass under his will. Whether he realized what he was doing or not, the construction of the words which he used was of course the only thing to be considered by Lord Justice Fry, sitting in the Chancery Division, and following *Smyth v. Smyth*, 8 Ch. Div., 561, in which the testator gave his sheep and "all the rest, residue, monies, chattels, and all other my effects," and it was held by Vice-Chancellor Mellins that all the freehold, as well as the personal estate of the testator, passed under these words.—*London Law-Times*.

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A BANK through which a draft has been sent for collection, and which has paid the amount under a mistaken belief that the draft was paid because of the failure of its correspondent to notify it of the refusal of the drawee to accept it, may recover the amount so paid from the drawee, although the latter has given a receipt for the debt to the drawer. *Chattanooga First Nat. Bank v. Bohan* (Ky.), 13 Ky. L. Rep., 148; 16 S. W., 368.

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CONTRACTS. (1) Where goods are sold on credit, it is an implied condition of the contract, that the buyer shall keep his credit good; and the seller is not bound to deliver the goods if the buyer be insolvent. The fact that the buyer has given his note or bill for the price, payable at the expiration of the credit, does not vary the rule. (2) If the insolvency of the buyer, is discovered by the seller while he yet has the goods, or while they are in transit, and he retakes them, he may elect to treat the agreement for credit as at an end, and resell the goods, unless the buyer pay or tender the price agreed on. (3) A party to a contract of sale, cannot sue for its breach, unless he is himself, able to perform on his part; it is therefore, a good defense to an action by the vendee for damages for the failure to deliver the property sold, that at the time fixed by the agreement for the delivery, he was insolvent, and on that account not able to perform his part of the contract. *Sup. Ct. of Ohio. Diem v. Koblitz.* Decided Jan. 19, 1892.

A CASE now before the English courts is attracting considerable attention on the continent and in it a very nice question is involved. An English subject, leaving his family in London went to Naples. While there he was captivated by the charms of an Italian woman, and upon his representations that he was a single man, she was persuaded to follow him to the altar. He was subsequently informed that his English wife died on the day of his second marriage. Much relieved by this news he returned to London. It was found, however, that taking into consideration the difference in time between London and Naples, the second marriage occurred a few minutes before his first wife's death, and that, by this calculation, he had been the husband of two wives for *twenty-three minutes*. He was accordingly arrested for bigamy; but whether or not he can be convicted under these circumstances remains to be decided. There would seem to be no reason why he should not be, as all the elements which make up that crime appear to be present in this case.—*Mich. Law Journal*.

THE COURTS.

Supreme Court of the District of Columbia.

IN EQUITY.—New Suits.

March 22, 1892.

13806. *Robert F. Allen v. Augusta Harris et al.* For partition by sale. Com. sol., W. P. Williamson.

13807. *Paul F. Beardsley et al. v. A. H. Young, Jr., et al.* For release of trust. Com. sol., W. H. Dennis.

March 23.

13808. *The Capitol Hill Brick Co. v. Galen E. Green and the Southern Bldg & Loan Association.* To enforce mechanics' lien. Com. sol., W. H. Sholes.

13809. *Anna Seifriz v. Paul Seifriz.* For divorce. Com. sols., Worthington & Heald.

13810. *Sarah E. Anderson, falsely called Poates, by her next friend, v. Jno. Poates.* To nullify marriage. Com. sol., J. Walter Cooksey.

March 24.

13811. *Jos. Hicks, Jr., alleged lunatic.* Upon petition Commissioners D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazleton.

13812. *Theodore E. Spencer v. Estelle F. Spencer.* For divorce. Com. sol., Jos. J. McNally.

13813. *Florence V. Gallaher et al. v. W. H. Pope et al.* For partition of lot 15, sq. 275, and part of lot 3, sq. 481. Com. sol., Jas. F. Hood.

13814. *W. B. T. Keyser et al. v. Gertrude A. Keyser.* To substitute trustee. Com. sols., J. J. Johnson and W. B. Todd. Defts.' sol., J. C. Marbury.

March 25.

13815. Johanna K. Fischer v. Chas. A. Fischer.
For divorce. Com. sol., J. A. Johnson.

13816. Daniel W. Cronin et ux. v. Mary C. Cronin et al. Com. sols., Clark and Johns and John Johns, Jr.

13817. Geo. F. Green v. W. R. Green et al. To sell infants' property. Com. sols., Gordon & Gordon. Dfta. sol., Wm. F. Hellen.

13818. Caroline Curtis et vir. v. Robert Farnham et al. For partition by sale of sublots 7, 8, 9, 16, 17, 39, 40, Farnham's sub., sq. 314. Com. sols., Edwards & Barnard.

13819. Marvin C. Stone v. H. F. Slocum. To enjoin assignments of patents. Com. sol., Jno. Ridout.

13820. Eliza Davis v. Samuel Davis. For divorce. Com. sols., Birney & Birney.

13821. A. J. Gray v. Flora C. Gray. For divorce. Com. sol., J. E. Clements.

March 29.

13822. Virginia May Tyler v. Albert W. Tyler. For divorce. Com. sols., Walker, Jepper & de Gufurie.

13823. W. H. Combs v. Adella v. Combs et al. For release from trusteeship. Com. sols., Nauck & Nauck.

13824. Job Barnard, admr., estate of Jno. J. Killafayle, v. Jas. H. Mead, executor and trustee. For account and to pay money into court. Com. sols., Edwards & Barnard.

AT LAW—New Suits.

March 23, 1892.

32758. Chas. Shepard v. Susan Kleiber. Judgment of Justice Taylor, \$24.07.

March 24.

Julius Stein v. American Fraternal Circle. Certiorari. Pliffs. atty., J. McD. Carrington.

32760. Geo. F. Pyles v. C. W. Pyles. Account, \$600. Pliffs. atty., A. B. Duvall.

32761. F. J. Dieudonné v. R. W. Bender et al. Judgment of Justice O'Neal, \$85.06.

32762. Jacob Franz v. W. G. Widmayer. Note, \$111.56. Pliffs. atty., C. A. Walter.

March 26.

32763. Gans Bros. v. W. A. Berkley. Account, \$122.95. Pliffs. atty., W. A. Johnston.

32764. W. H. Slater v. J. H. Pryor. Note, \$228. Pliffs. atty., J. G. Bigelow.

32765. Kniffen & Tooker v. W. E. Prall. Notes, \$652.25. Pliffs. atty., C. Carrington.

32766. J. W. Hancock v. Harry Isemann, et al. Certiorari. Pliffs. Atty., L. Tobriner.

32767. Jno. Turnbull, Jr. & Co., v. H. Baum. Account \$462.99. Pliffs. Atty., Wm. Myer Lewin.

32768. T. G. Hensey v. E. L. Scott, et al. Judgment of Justice Taylor.

32769. E. A. McIntire v. Annie Myers. Appeal.

32770. Martha Brown et al. v. Jere. Sykes et al. Ejectment. Pliffs. Attys., Edwards & Barnard.

32771. Daniel Birtwell v. Mary A. Kelley. Note \$300. Pliffs. Atty., L. C. Williamson.

Legal Notices

Rule of Court.

RULE 20. * * * * Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

FIRST INSERTION.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 25th day of March, 1892.

Emma C. Goodman } vs. } No. 13,872. Eq. Docket 32.
Charles B. Goodman. }

On motion of the plaintiff, by Mr. A. B. Williams, her solicitor, it is ordered that the defendant, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a decree of divorce from the bond of marriage with defendant on the ground of desertion.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
9 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 24th day of March, 1892.

Albert F. Fox, Administrator of the Estate of Emmett Kennedy, } vs. } No. 13,881. Eq. Doc. 33.
Thomas Pitchlynn. }

On motion of the plaintiff, by Messrs. Edwards & Barnard his solicitors, it is ordered that the defendants, ALICE BEVIL, EMMA GREEN, MOLLY FOLSOM, MINNIE SEMPLE, RHODA MORRIS, and DAVID FOLSOM, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to make distribution to the parties entitled, of the personal estate of the late Emmett Kennedy, deceased, now in the hands of the complainant.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
13 By M. A. Clancy, Asst. Clerk.

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters of Administration on the personal estate of JANE B. GILES, otherwise called JENNIE E. GILES, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of February, 1892.
FENELEON B. BROCK,

13 Geo. L. Clark, Proctor. 26 Atlantic Bldg.

This is to Give Notice

That the subscriber of Washington City, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, letters Testimonial on the personal estate of ANN JOYCE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of March next; they may otherwise by law be excluded from all benefit of the said deceased.

Given under my hand this 19th day of March, 1892.
JOSE IGNACIO RODRIGUEZ,
13 No. 4891. Ad. Doc. 17. 2 Lafayette Square.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of MARY JANE ROSS, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of March, 1892.

IRVING GIBSON,
13 J. H. Adriaans, Proctor.
710 15th St., n. e.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of ELIZABETH SMEDLEY BERRY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 26th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of March, 1892.

JAMES J. CAMPBELL,
18 Randall Hagner, Proctor. 928 New York Ave., n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters Testamentary on the personal estate of CAROLINE C. ACKER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of March, 1892.

WALTER H. ACKER,
18 WALTER H. ACKER,
1008 F St., n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

March 25th, 1892.

In the case of James L. McLane, Executor of JOSEPH E. JOHNSTON, deceased, the Executor aforesaid has, with the approval of the court, appointed Friday, the 29th day of April, A. D. 1892, at one o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star previous to the said day.

Test: L. P. WRIGHT,

Register of Wills for the District of Columbia.
18 No. 4346. Ad. Doc. 16. Gordon & Gordon, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 28th day of March, 1892.

Robert Briscoe }
v. { No. 13,688. Eq. Docket 33.
Lavinia Briscoe. }

On motion of the plaintiff, by Mr. Campbell Carrington, his solicitor, it is ordered that the defendant, LAVINIA BRISCOE, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for an absolute divorce upon the ground of wilful and uninterrupted desertion for over two years from the filing of the petition in this cause.

By the Court. A. B. HAGNER, Justice, &c.

True copy. Test: J. R. Young, Clerk, &c.
By M. A. Clancy, Asst. Clerk.

Legal Notices.**SECOND INSERTION.****IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

Holding a Special Term for Orphans' Court Business.

March 18th, 1892.

In the case of The Washington Loan & Trust Co., Administrator of ANDREW McCALLUM, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 15th day of April, A. D. 1892, at 1 o'clock p. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched, otherwise the Administrator will take the benefit of the law against them.

Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star previous to the said day.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
12 No. 4336. Adm. Doc. 16. John B. Larner, Proctor

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters Testamentary on the personal estate of MARGARETHA VOLK, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 11th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 11th day of March, 1892.

GEO. C. WALKER,
12 Julius A. Maedel, Proctor. 614 12th St. n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 21st day of March, 1892.

Mary L. Davis } vs. { No. 13,504. Eq. Docket 33.
Samuel A. Davis.

On motion of the plaintiff, by Mr. C. Maurice Smith, her solicitor, it is ordered that the defendant, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for a divorce a vinculo matrimonii, on the ground of desertion and abandonment for more than two years before the filing of the bill.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
12 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

March 18th, 1892.

In the matter of the Estate of HENRY R. CRONIE, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased, has this day been made by Mary J. Cronie.

All persons interested are hereby notified to appear in this Court on Friday, the 15th day of April next, at 1 o'clock p. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased I should not issue as prayed.

Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT,

Register of Wills for the District of Columbia.
12 No. 4385. Ad. Doc. 17.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of MARGARET L. HULSE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of March, 1892.

D. WEBSTER PRENTISS,
12 D. O'C. Calaghan, Proctor. 1101 14th St. n. w.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of SAMUEL THOMPSON, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of March, 1892.

JOHN A. BARTHEL,
221 4½ St., n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of WILLIAM MERCER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 12th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of March, 1892.

REBECCA D. MERCER,
Care of J. THOMAS SOTHORON,
12 J. Thos. Sothoron, Proctor. 412 5th St. n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters of Administration on the personal estate of MARGARET C. BARBER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of March, 1892.

JOHN A. BARBER,
12 Wm. L. Dunlop, Proctor. 3241 N St. n. w.

RATCLIFFE, DARR & CO., AUCTIONEERS.**TRUSTEE'S SALE OF VERY DESIRABLE IMPROVED PROPERTIES, BEING NO. 1745 JOHNSON AVE.**

AND NO. 618 SIXTH ST., S. W., WASHINGTON, D. C.

Under and by virtue of a decree passed on the 3rd day of March, 1892, in Equity cause No. 13,472, docket No. 32, of the Supreme Court of the District of Columbia, wherein William R. Shaw is complainant and Thomas M. Cassell et al. are defendants, the undersigned will offer for sale to the highest bidder on TUESDAY, THE 5TH day of APRIL, A. D., 1892, AT 4:30 P. M., in front of the premises, No. 1745 Johnson Avenue, the following real property, to wit: all that piece or parcel of land and premises lying and being in the city of Washington and District of Columbia, known and distinguished as lot S. 44 of Square No. 207. The lot fronts 20 feet on Johnson Ave. by 134 feet 3 inches in depth, together with the improvements, consisting of a two story brick residence with a one story brick stable in the rear; and thereafter on THURSDAY, THE 7TH DAY OF APRIL, AT 4:30 O'CLOCK, P. M., they will offer for sale under said decree in front of the premises, No. 618 6th Street, S. W., the following real property: lot G. Square No. 467—said lot faces 18 feet 2 inches on 6th Street by a depth of 66 feet 3 inches, and improved by a three story dwelling, in the city of Washington and District of Columbia. Terms of sale: one-third cash, and the balance in two equal instalments in one and two years, with interest from day of sale, at the rate of six per cent. per annum, payable semi-annually, to be secured by the promissory notes of the purchaser, and deed of trust on the property, or all cash at the purchaser's option.

A deposit of \$200 will be required of the purchaser at the time of sale; all conveyancing and recording at the cost of the purchaser. If the terms of sale be not complied with within ten days from time of sale the Trustees reserve the right to resell the property at the risk and cost of the defaulting purchaser.

FRANK T. BROWNING,
416 5th St., N. W.
ANDREW A. LIPSCOMB,
Over Mertz's Drug Store, 11th & F Sts. N. W.
Trustees.

12-21.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of CHARLES F. MOSEBY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of March, 1892.

MARY S. M. NASH,
mark

12 Gordon & Gordon, Proctors. 2718 Dumbar'on ave.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of GEORGE W. KNOX, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 18th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of March, 1892.

WILLIAM S. KNOX,
201 B St., n. w.

This is to Give Notice

That the subscriber, of Washington City hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of JOHN COX, late of Portsmouth, Virginia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 5th day of October, 1892, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of March, 1892.

REESE H. VOORHEES,
1406 G St., n. w.
No. 4612. Ad. Doc. 17.

This is to Give Notice

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphan's Court business, Letters Testamentary on the personal estate of EDWARD TEMPLE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 21st day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 21st day of March, 1892.

MARY J. G. TEMPLE,
MAHLON ASHFORD.

12 John Ridout, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

March 18th, 1892.

In the case of Thomas H. Tolson, Administrator of FRANCIS A. TOLSON, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 15th day of April, A. D. 1892, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: L. P. WRIGHT.
Register of Wills for the District of Columbia.
12 No. 4157. Admir. Docket 16. Randall Hagner, Proctor.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

Holding a Special Term for Orphans' Court Business.

March 18th, 1892.

In the case of Robert H. G. Dyson, Executor of TOBIAS C. JOHNSON, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 15th day of April, A. D. 1892, at one o'clock p. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test:

L. P. WRIGHT,

Register of Wills for the District of Columbia.

12 No. 4285. Admn. Doc. 16. Chas. H. Cragin, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

March 18th, 1892.

In the case of John F. Cook, Executor of ISAAC LANDIC, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 15th day of April, A. D. 1892, at one o'clock p. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test:

L. P. WRIGHT,

Register of Wills for the District of Columbia.

12 No. 4172. Admn. Doc. 16. Calderon Carlisle, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

March 28th, 1892.

In the matter of the estate of ELIZABETH THWAITES, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased, has this day been made by George Thwaites, husband surviving, who prays that said Letters may be granted to the Washington Loan & Trust Co.

All persons interested are hereby notified to appear in this Court on Friday, the 15th day of April next, at one o'clock p. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER and Evening Star previous to the said day.

By the Court.

A. B. HAGNER, Justice.

Test:

L. P. WRIGHT,

Register of Wills for the District of Columbia.

12 No. 4882. Admn. Doc. 17. John B. Larner, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

March 18th 1892.

In the matter of the Estate of FEARNLEIGH LEWIS MONTAGUE, otherwise known as ALMA WOODLEIGH, late of this District deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration on the Estate of the said deceased, has this day been made by William H. Veerhoff, a creditor.

All persons interested are hereby notified to appear in this Court on Friday, the 15th day of April next, at one o'clock p. m., to show cause why Letters of Administration on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Washington Post previous to the said day.

By the Court.

A. B. HAGNER, Justice.

Test:

L. P. WRIGHT,

Register of Wills for the District of Columbia.

12 No. 4878. Ad. Doc. 17.

Legal Notices.**This is to Give Notice**

That the subscriber, or the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of HARRY J. REIDY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 27th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of February, 1892.

JOHN F. KELLY,

12 Albert Sillers, Proctor. 81 G Street, n. w.

THIRD INSERTION.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

Holding a Special Term for Orphans' Court Business.

March 11th, 1892.

In the case of George Voncif, Executor of CONRAD SENKIND, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 15th day of April, A. D. 1892, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test:

L. P. WRIGHT,

Register of Wills for the District of Columbia.

11 No. 4286. Ad. Doc. 16. C. A. Walter, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

March 12th, 1892.

In the case of Albert F. Childs, Frank H. Childs and Mabel I. Childs, Executors of WILLIAM E. CHILDS, deceased, the Executors aforesaid have, with the approval of the Court, appointed Friday, the 15th day of April, A. D. 1892, at 1 o'clock p. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized with their claims against the estate properly vouched; otherwise the said Executors will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test:

L. P. WRIGHT,

Register of Wills for the District of Columbia.

11 No. 4289. Dorsey Claggett, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 11th day of March, 1892.

Cordella Cantwell, } vs. } No. 13.726. Eq. Docket 83.

John O. Cantwell.

On motion of the plaintiff, by Mr. E. B. Hay, her solicitor, it is ordered that the defendant, JOHN O. CANTWELL, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is divorce for willful desertion and abandonment.

By the Court.

A. B. HAGNER, Justice, &c.

True copy. Test:

J. R. Young, Clerk, &c.

11 By M. A. Clancy, Asst. Clerk.

This is to Give Notice

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters Testamentary on the personal estate of ANNA KEY LAIRD, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscribers, on or before the 12th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 12th day of March, 1892.

MAYHEW PLATER,

3108 N St. n. w.

CHARLES M. MATTHEWS,

11 C. M. & H. S. Matthews, Proctors. 714 15th St., n. w.

Legal Notices.

THE LAW REPORTER CO.
have a
JOB OFFICE
and do
PRINTING OF ALL KINDS

Remember it

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 10th day of March, 1892.

Ella M. Abbott } vs. No. 13,699. Eq. Docket 38.

William Edgar Abbott, }
On motion of the plaintiff, by Mr. Simon Wolf,
her solicitor, it is ordered that the defendant cause his
appearance to be entered herein on or before the first rule-
day occurring forty days after this day; otherwise the cause
will be proceeded with as in case of default.

The object of this suit is to obtain a divorce from the bond
of marriage, on the ground of willful desertion and aban-
donment for the full and uninterrupted space of two years
and over of complainant by the defendant.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.

11 By M. A. Clancy, Asst. Clerk.
[Filed March 10, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 16th day of March, 1892.

William Mayse } vs. No. 13,700. Eq. Docket 38.

Margaret L. Gaddis and }
William Gaddis. }
On motion of the plaintiff, by Mr. Franklin H. Mackey,
his solicitor, it is ordered that the defendants, MARGARET
L. GADDIS and WILLIAM GADDIS, cause their appearance
to be entered herein on or before the first rule-day occur-
ring forty days after this day; otherwise the cause will be
proceeded with as in case of default.

The object of this suit is to remove a cloud from the title
of plaintiff to original lot twenty (20) in square ten hundred
and fifty-eight (1058) in the city of Washington, District of
Columbia.

By the Court. A. B. HAGNER, Justice, &c.
A true copy. Test: J. R. Young, Clerk, &c.
11 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 16th day of March, 1892.

William Mayse } vs. No. 13,710. Eq. Docket 38.

Charles J. Meister. }
On motion of the plaintiff, by Mr. Franklin H. Mackey,
his solicitor, it is ordered that the defendant, CHARLES J.
MEISTER, cause his appearance to be entered herein on or
before the first rule-day occurring forty days after this day;
otherwise the cause will be proceeded with as in case of
default.

The object of this suit is to remove a cloud from the title
of the plaintiff to original lots one (1), two (2), seventeen (17)
and eighteen (18) in square ten hundred and sixty-nine
(1069) in the city of Washington, District of Columbia.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
11 By M. A. Clancy, Asst. Clerk.

Legal Notices**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**
Holding a Special Term for Orphans' Court Business.

March 11th, 1892.

In the matter of the Estate of ISABELLA STEER, late of
Washington, deceased.

Application for the Probate of the last Will and Testa-
ment and for Letters of Administration c. t. a. on the Estate
of the said deceased, has this day been made by Edward and
Laura Steer, now Lambert.

All persons interested are hereby notified to appear in this
Court on Friday, the 15th day of April next, at 10 o'clock
a. m., to show cause why the said Will should not be proved
and admitted to Probate and Letters of Administration c. t.
a. on the Estate of the said deceased should not issue
as prayed.

Provided a copy of this order be published once a week
for three weeks in the Washington Law Reporter and
Washington Post previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT,
11 Register of Wills for the District of Columbia.
No. 3857. Ad. Doc. 15. J. R. McMillan, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

March 5th, 1892.

In the matter of the Estate of ANN CLANCY, late of the
District of Columbia, deceased.

Application for the Probate of the last Will and Testa-
ment and for Letters Testamentary on the Estate of the
said deceased, has this day been made by George P. Zurhorst
and Michael McCormick.

All persons interested are hereby notified to appear in
this Court on Friday, the 8th day of April next, at 11 o'clock
a. m., to show cause why the said Will should not be proved
and admitted to Probate and Letters Testamentary on the
Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for
three weeks in the WASHINGTON LAW REPORTER and
Washington Post, previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

March 11th, 1892.

In the matter of the Estate of JOHN EDWIN MASON,
late of Washington, D. C., deceased.

Application for the Probate of the last Will and Testa-
ment and for Letters Testamentary on the Estate of the
said deceased, has this day been made by Henry M. Baker.

All persons interested are hereby notified to appear in
this Court on the 15th day of April next, at one o'clock,
p. m., to show cause why the said Will should not be proved
and admitted to Probate and Letters Testamentary on the
Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for
three weeks in the Washington Law Reporter and
Washington Post previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT,
11 Register of Wills for the District of Columbia.
No. 488. Ad. Doc. 17.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

March 12, 1892.

In the matter of the Estate of CLEMENT STROBL,
sometimes known and acting as FRANK FORSTER, late of
the District of Columbia, deceased.

Application for the Probate of the last Will and Testa-
ment and for Letters Testamentary on the Estate of the
said deceased, has this day been made by William D. Judge.

All persons interested are hereby notified to appear in
this Court on the 15th day of April next, at one o'clock
P. M., to show cause why the said Will should not be proved
and admitted to Probate and Letters Testamentary on the
Estate of the said deceased should not issue as prayed,

Provided a copy of this order be published once a week for
three weeks in the Washington Law Reporter and
Washington Post previous to the said day.

By the Court. A. B. HAGNER, Justice,
Test: L. P. WRIGHT,
11 Register of Wills for the District of Columbia.
No. 4732. Ad. Doc. 17. J. Guilford White, Proctor.

Legal Notices.**This is to Give Notice**

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters of Administration c. t. a. on the personal estate of ELIZABETH A. TOWNSEND, otherwise known as OLLIE ASTOR, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of March, 1892.

RICHARD SYLVESTER,
Property Clerk,

11 C. Maurice Smith, Proctor. Police Headquarters.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business.

March 11th, 1892.

In the case of Doree Clagett and Wm. Ward Mohun. Executors of WILLIE B. CLAGETT, deceased, the Executors aforesaid have, with the approval of the Court, appointed Friday, the 8th day of April, A. D. 1892, at 1 o'clock p.m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter, previous to the said day.

Test:

L. P. WRIGHT,
Register of Wills for the District of Columbia.
11 No. 4249. Ad. Doc. 16.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Arthur P. West et al. vs. In Equity. No. 953, Rules 5.

Wm. D. W'e et al. The trustee, Frederick L. Siddons, having reported to the Court the sale for \$150 cash to E. P. Berry of the lot of ground referred to in the decree appointing him trustee, the same being part of lot 75 in square 18 in "Old Georgetown," fronting about 37 feet 9 inches on an alley 80 feet wide known as West Alley and running back with that width about 75 feet to the north line of said lot, and the same having been considered, it is, by the Court, this 12th day of March, A. D. 1892, ordered, adjudged and decreed that said sale be ratified and confirmed unless cause to the contrary be shown on or before the eighteenth day of April, A. D. 1892.

Provided that a copy of this decree be published in the Washington Law Reporter once in each of three (3) successive weeks prior to said date.

A. B. HAGNER, Justice.
True copy. Test: J. R. Young, Clerk.
By M. A. Clancy, Asst. Clerk.

This is to Give Notice

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of SAMUEL STRONG, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscribers, at office of Carusi & Miller, 484 La. Ave., on or before the 8th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 8th day of March, 1892.

WILLIAM J. MILLER.
HALBERT E. PAINE.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of PATRICK CORCORAN, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 11th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 11th day of March, 1892.

11 S. T. Thomas, Proctor. JOHN IMRIE,
1846th St., s. w.

Legal Notices.**This is to Give Notice**

That the subscribers of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of BERNARD FITZPATRICK, late of the District of Columbia, deceased.

All persons having claims against the said deceased, are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 11th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 11th day of March, 1892.

MARY FITZPATRICK,
11 Carusi & Miller, Proctors. 1838 14th St. N. W.

This is to Give Notice

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of ANDREW BRYSON, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 9th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 9th day of March, 1892.

CHARLOTTE M. BRYSON,
A. BRYSON,

11 Blair Lee, Proctor. 1822 Mass. ave., Washington, D. C.

This is to Give Notice

That the subscriber, of Philadelphia, Penna., has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of JOSEPH M. JAYNE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 11th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 11th day of March, 1892.

EBEN. C. JAYNE,
11 Wm. G. Johnson, Proctor. 242 Chestnut St., Phila.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business.

March 11th, 1892.

In the matter of the Estate of HARRIET N. LE CONTE, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Eva Le Conte.

All persons interested are hereby notified to appear in this Court on Friday, the 8th day of April, next, at 10 o'clock A. M., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test:
L. P. WRIGHT,

Register of Wills for the District of Columbia.
11 No. 4798. Ad. Doc. 17. Archibald Young, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business.

March 11th, 1892.

In the matter of the Estate of GEORGE F. SCHAFER, late of Washington, D. C., deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Minna Schaefer.

All persons interested are hereby notified to appear in this Court on Friday, the 8th day of April, next, at one o'clock P. M., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Washington Post previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test:
L. P. WRIGHT,
Register of Wills for the District of Columbia.
11 No. 4879. Ad. Doc. 17. Gordon & Gordon, Proctors.

The Washington Law Reporter.

ESTABLISHED 1874.

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[WEEKLY]

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WASHINGTON, D. C., - - - - APRIL 7, 1892

READ in this issue of the LAW REPORTER the decision of the Supreme Court of the United States *In re Thomas H. Heath*, on application for writ of error to the Supreme Court of the District of Columbia; also, *In re Ignatius Nau*, on petition to the Supreme Court of the District for a writ of *habeas corpus*.

We suggest also that you are likely to find some other good reading matter in the paper this week.

Supreme Court of the United States.

Decision January 4, 1872.

Board of County Commissioners v. Andrew Potter.

Action on interest-bearing coupons attached to county bonds of the County of Chaffee, Colorado.

Plea, that the bonds had not been authorized by a vote of the qualified voters of the county, and no bonds had been authorized to be exchanged for the warrants of the county; that the bonds and each of them were issued in violation of Sec. 6, Art. 11, of the constitution of the State, and the debt which they assumed to fund was contracted in violation of said provision of the Constitution; and that the bonds were issued by the board of county commissioners without any consideration valid in law, as plaintiff well knew when he received the coupons sued on.

Demurrer to defendant's plea sustained by Circuit Court and judgment rendered for

the plaintiff. The Circuit Court held that the county was estopped by the recitals in the bonds, from pleading said defenses.

The judgment of the Circuit Court is affirmed.

Decided March 21, 1892.

Eugene C. Gordon, Plaintiff in Error, v. The Third National Bank of Chattanooga, Tennessee.

This was an action by said bank against said Gordon upon two promissory notes executed by Gordon and made payable to his own order, and endorsed by him and also by D. G. Crudup & Co. Gordon pleaded the general issue and special pleas, by setting up, first, that the notes were merely accommodation papers for the use and benefit of D. G. Crudup & Co., and that the bank, after notice of that fact, and with Gordon's consent, for a valuable consideration, agreed with Crudup & Co., to extend the time of payment of the notes to September 2, 1887, and thence to September 2, 1888, in consideration of a mortgage, etc.; second, that he did not endorse the notes in manner and form as the bank set forth in its declaration; third, that long after the maturity of the notes * * * Crudup & Co., by deed of general assignment for the benefit of their creditors and for the payment of the notes, conveyed a large amount of personal and real property to trustees, etc., and that the bank * * * agreed to waive its right to have the payment of the notes made by the trustees, etc.

The two notes were for \$2,500 each, and the defendant (Gordon) objected to their introduction in evidence, and moved to exclude the first one, but the court overruled the objection and motion, and the defendant excepted. The evidence tended to show that the bank had never agreed to an extension of time on the notes, but that the bank looked alone to Gordon. Verdict and judgment for plaintiff (bank). The seventeen errors assigned by Gordon were considered by this court, and this judgment affirmed.

Supreme Court of the District of Columbia.
IN GENERAL TERM.

IN RE IGNATIUS NAU.

RULE 128. APPEAL FROM POLICE COURT.—HABEAS CORPUS.

Rule 128 of the rules of the Supreme Court of the District of Columbia, relating to appeals from the Police Court is in direct conflict with Sections 1073, 1074, 1075, 1076 and 1077, of the Revised Statutes relating to the District, in so far as it requires an appellant from the Police Court to the Criminal Term to pay \$5.00 in order to secure the docketing and trial of his case on appeal.

No. 167. Habeas Corpus Docket. Decided March 7, 1892.

The CHIEF JUSTICE and Justices COX and JAMES sitting.

Messrs. LEON TOBRINGER and JOSEPH J. McNALLY for the petitioner.

Messrs. GEO. C. HAZLETON and NEILL DUMONT for the District of Columbia.

CHIEF JUSTICE BINGHAM delivered the opinion of the Court:

It appears from the petition of Ignatius Nau that on the 27th day of August, 1890, he was tried in the Police Court of the District of Columbia and found guilty of keeping a place where distilled and fermented liquors were sold, without having obtained a license. He appealed the case to the Supreme Court, sitting as a criminal court, on the 27th day of August, 1890, and entered into a recognizance in the Police Court to prosecute his appeal. On the 9th of September following the clerk of the Police Court laid in the office of the Supreme Court of the District of Columbia an information and on the 23d day of December the District of Columbia by a special attorney moved the Supreme Court of the District of Columbia, holding a criminal term, that the papers in the appeal aforesaid be returned and the case be remanded to the Police Court there to be proceeded in as if no appeal had been taken. On the same day the Criminal Court sustained the motion and granted the order as therein requested. It is averred in the petition that this order was made by the Criminal Court because the petitioner had not prosecuted his appeal in accordance with Rule No. 128 of the Supreme Court of the District of Columbia, by making the deposit of \$5, or otherwise obtaining leave of the court to appeal without the payment of this sum of money. It is further averred that the appeal having been remanded to the police court the relator was on the 10th day of January, 1891, arrested by process issuing out of the Police Court to show cause why he did not perform the judgment of the Police Court and that thereupon he objected

to the jurisdiction of that court and the same being overruled he was by order of the Police Court placed in custody at the work house of the District of Columbia in pursuance of the judgment of the Police Court, passed against him in August, 1890. He avers that he is now in the custody of the intendant of the work house and that he is held in such custody without warrant of law and he asks that he be discharged by this writ of habeas corpus.

Rule 128 is as follows: "Whenever any person convicted in the Police Court of any offense against the municipal laws of the District of Columbia shall appeal from the judgment of said court, the clerk of said court shall, within five days of the rendition of said judgment send up the record of the case to the criminal court.

"As soon as the appellant shall have made a deposit of \$5 for costs, or obtained leave from one of the justices or from the court to prosecute his appeal without a deposit, the clerk shall docket the cause for trial.

"If the appellant shall fail to perfect his appeal by making the deposit or obtaining the leave aforesaid, within 10 days after the record shall have been sent up, the judge holding the criminal court shall, on motion of the Attorney for the District, or one of his assistants, order the papers to be returned and the case to be remanded to the Police Court, there to be proceeded in as if no appeal had been taken."

It is claimed that this rule of the court is in conflict with the express provisions of the statute relating to the Police Court. By section 1073 of the act authorizing the Police Court, it is provided that. "Any party deeming himself aggrieved by the judgment of the Police Court may appeal to the Supreme Court" and section 1074 of the same act provides "In all appeals the party applying for appeal shall enter into recognizance, with sufficient surety to be approved by the judge, for his appearance at the criminal term of the Supreme Court then in session, or at the next term thereof, if the criminal term be not then in session, there to prosecute the appeal and to abide by the judgment of the Supreme Court. Section 1075: "Upon such recognizance being given, all further proceedings in the police court shall be stayed." Section 1076: "Such recognizance so approved, and the information or complaint, shall be immediately transmitted to the clerk of the Supreme Court." Section 1077: "Upon the failure of any party appealing from the judgment of

the Police Court to the Supreme Court to enter into recognizance as provided for in section 1074, he shall be committed to jail to await his trial upon his appeal, and the trial shall be had in the Supreme Court as though such recognizance had been entered into."

It would seem to have been the determination of Congress, that where a party was compelled to submit to an adjudication of a police judge without a jury, whatever may have been or might be the character of the case, whether such as that the party was or was not entitled to a jury at common law, nevertheless, in all these cases the party should have the right to appeal to the Criminal Court and have his trial by jury notwithstanding any remissness on his part in perfecting the appeal from the Police Court.

It is claimed by counsel for the District that Section 770 grants to this court sufficient power to make Rule 128 notwithstanding the legislation just recited. That section is as follows :

"The Supreme Court, in General Term, shall adopt such rules as it may think proper to regulate the time and manner of making appeals from the special term to the General Term, and may prescribe the terms and conditions upon which such appeals may be made, and may also establish such other rules as it may deem necessary for regulating the practice of the court, and from time to time revise and alter such rules."

It is claimed that the general power here to make rules and regulate the practice of the court is ample to authorize the establishment of the rule one hundred and twenty-eight.

Now, if there was no such provision of the statute regulating the trial of such cases in the Criminal Court, it might well be said that the court had power to make such a rule as this. Indeed, we have no doubt about that.

We are of opinion that Rule 128 in so far as its provision, requiring that an appellant from the Police Court to the criminal term of the Supreme Court must pay \$5.00 in order to secure the docketing of his case and its subsequent trial, or otherwise it shall be dismissed and remanded to the Police Court, is concerned is in direct conflict with sections 1073, 1074, 1075, 1076 and 1077 of the Revised Statutes relating to the District of Columbia, and must therefore be declared to be void. Congress in enacting these sections intended to give to a party the right to a trial by jury simply

by claiming an appeal, and when that was done then nothing could happen by his default or otherwise, that would deprive him of the right of a trial by jury in the Criminal Court.

The petitioner having been denied a jury trial on his appeal as was his right will be discharged.

Professional Propriety.

The Washington Law Reporter :

In the opinion of the court in the case of Sherman v. Sherman reported in your number of March 10, is quoted, with seeming approval, an extract from the brief of counsel, (who, though representing the "bill of review," took the other side in the argument) reflecting upon the Title Company which was not a party to the record, and consequently had no opportunity to be heard.

While not disposed to question the good taste of the counsel in indulging their fancy in what they supposed was a display of wit, and while having the highest respect for the decisions of our court, even in a case like this—where the pleadings happened to be so arranged as to permit a judge to sit in review of his own decree below,—I beg leave to say once for all, that this Company, recognizing its responsibility only to those whose interests are committed to its care, proposes to discharge the duty involved in that responsibility uninfluenced by the criticisms of judges or counsel.

Some seven years ago, the "self-constituted tribunal," as the counsel were pleased to term us, "overruled the decision of the Equity Court" and declined to permit a client to invest his money in a piece of property which was held under a decree of the court passed in 1874, on the ground that the decree was invalid. For this "slander of title" we came in for the usual amount of abuse, and it is believed that if the learned counsel in the Sherman case had represented the vendor, we should have had a foretaste of the spleen they worked off in the brief referred to.

Yet the Court in General Term last year, held the decree alluded to, to be null and void. *Stansbury v. Inglehardt*, Law Reporter of Sept. 17, 1891.

If the "self-constituted tribunal" had then yielded to fear or favor, it would have had to make good the loss that would have ensued to its client, and doubtless would have lost the client.

As it is, the poor man who invested his money on the faith of the infallibility of the decree, is without relief.

It is an easy matter for those whose responsibility *ends* with their decisions, to impugn the motives and criticise the acts of those whose responsibility *begins* with their decisions, and beginning, *never ends*.

M. ASHFORD,
April 2, 1892. Prest. Title Co.

A MODEL INDICTMENT.—"Thou hast most traitorously corrupted the youth of the realm in erecting a grammar school: and whereas, before, our forefathers had no other books but the score and the tally, thou hast caused printing to be used, and, contrary to the king, his crown and dignity, thou hast built a paper mill."—*Shak.* King Henry VI, Part II, Act 4, Sc. 7.

What stronger breastplate than a heart untainted!

Thrice is he armed that hath his quarrel just,

And he but naked, though locked up in steel,

Whose conscience with injustice is corrupted.

—*Shak.*

Book Review.

FINCH'S DIGEST. Digest of insurance cases, embracing the decisions of the Supreme and Circuit Courts of the United States, of the Supreme and Appellate Courts of the various States and Foreign Countries, upon disputed points in Fire, Life, Marine, Accident and Assessment Insurance, and affecting Fraternal Benefit Orders. Reference to Annotated Insurance cases in editorials in law journals on insurance cases. For the year ending October 31, 1891. By JOHN A. FINCH, of the Indianapolis Bar. Indianapolis: The Rough Notes Company, Publishers: 1892.

The book contains 213 octavo pages, and bears every appearance of being a carefully prepared digest.

Supreme Court of the United States.

In Re THOMAS H. HEATH.

The Supreme Court of the United States has no jurisdiction to grant a writ of error to the Supreme Court of the District of Columbia, in a case where the defendant has been convicted of manslaughter by the latter court, and sentenced to imprisonment.

Decided March 21, 1892.

PETITION for a writ of error to the Supreme Court of the District of Columbia.

THOMAS H. HEATH was convicted of manslaughter at a special criminal term of the Supreme of the District of Columbia, and sentenced to be confined in the penitentiary at Albany, N. Y. Upon appeal to the general term of that court the judgment was affirmed, whereupon he applied for a writ of error from this court.

THE petition was originally presented to the Chief Justice, and, by order duly made, referred to the court in session for the consideration and determination of the question of jurisdiction arising thereon.

Chief Justice FULLER delivered the opinion of the Court:

By Section 5 of the Judiciary Act of March 3, 1891, 26 Stat., 826, it was provided that appeals and writs of error might be taken "from the District Courts or from the existing Circuit Courts" directly to this court "in cases of conviction of a capital or otherwise infamous crime." And although this case is not embraced in terms within the appellate jurisdiction conferred by the provision, yet it is contended that it falls within it, when taken in connection with Section 846 of the Revised Statutes of the District of Columbia. That section is as follows: "Any final judgment, order, or decree of the Supreme Court of the District may be re-examined and reversed or affirmed in the Supreme Court of the United States, upon writ of error or appeal, in the same cases and in like manner as provided by law in reference to the final judgments, orders, and decrees of the Circuit Courts of the United States."

The argument is, that the phrase "as provided by law" should be construed as if it read "as is, or has been, or may be provided by law." But when we consider the general rule that the affirmative description of the cases in which the jurisdiction may be exercised implies a negative on the exercise of such power in other cases, it will be seen that to give to this local legislation extending the appellate jurisdiction of this court to the District of Columbia, the construction contended for, so as to make it include all subsequent legislation touching our

jurisdiction over Circuit Courts of the United States, is quite inadmissible.

Prior acts may be incorporated in a subsequent one in terms or by relation, and when this is done, the repeal of the former leaves the latter in force, unless also repealed expressly or by necessary implication. And the adoption in a local law of the provisions of a general law does not carry with it the adoption of changes afterwards made in the general law. This was so ruled in *Kendall v. United States*, 12 Pet., 524, 625. One of the questions there was whether the then Circuit Court of this District had power to issue the writ of mandamus to a public officer. That court was established by the Act of Congress of February 27, 1801, 2 Stat., 103, which provided by section 3: "That there shall be a court in said District, which shall be called the Circuit Court of the District of Columbia; and the said court and the judges thereof shall have all the powers by law vested in the Circuit Courts and the judges of the Circuit Courts of the United States." At the time the law went into effect, the powers of the Circuit Courts of the United States were prescribed by the act of February 13, 1801, 2 Stat., 89, which act was repealed by the act of March 3, 1802, 2 Stat., 132. This court held that the Circuit Court of the District possessed the powers vested under the act of February 13, 1801, notwithstanding its repeal, and Mr. Justice Thompson, delivering the opinion of the court, said:

"It was not an uncommon course of legislation in the States, at an early day, to adopt, by reference, British statutes; and this has been the course of legislation by Congress in many instances where State practice and State process has been adopted. And such adoption has always been considered as referring to the law existing at the time of adoption; and no subsequent legislation has ever been supposed to affect it. And such must necessarily be the effect and operation of such adoption. No other rule would furnish any certainty as to what was the law, and would be adopting prospectively, all changes that might be made in the law. And this has been the light in which this court has viewed such legislation. In the case of *Cathcart v. Robinson*, 5 Peters, 280, the court, in speaking of the adoption of certain English statutes, say, by adopting them, they become our own as entirely as if they had been enacted by the legislature. We are then to construe this third section of the act of 27th of February, 1801, as if the eleventh section of the act of 13th of February, 1801, had been incorporated at full length; and by this section it is declared, that the Cir-

cuit Courts shall have cognizance of all cases in law or equity, arising under the Constitution and laws of the United States, and treaties made, or which shall be made under their authority; which are the very words of the Constitution, and which is, of course, a delegation of the whole judicial power, in cases arising under the Constitution and laws, etc.; which meets and supplies the precise want of delegation of power which prevented the exercise of jurisdiction in the cases of *McIntire v. Wood*, 7 Cr., 504, and *McClung v. Silliman*, 6 Wheat., 598; and must, on the principles which governed the decision of the court in those cases, be sufficient to vest the power in the Circuit Court of this District."

We do not consider the weight of this decision, as authority, weakened by anything that fell from the court in *Wales v. Whitney*, 114 U. S., 564. That was an appeal from the judgment of the Supreme Court of the District denying an application for a writ of habeas corpus. Upon the judgment being announced, an original application was made to this court for the writ, but, as stated by Mr. Justice Miller in the opinion, "on a suggestion from the court that an act of Congress, at its session just closed, had restored the appellate jurisdiction of this court in habeas corpus cases over decisions of the Circuit Courts, and that this necessarily included jurisdiction over similar judgments of the Supreme Court of the District of Columbia, counsel, on due consideration, withdrew their application," and brought up the record on appeal; and it was added that section 846 of the Revised Statutes of the District "justifies the exercise of our appellate jurisdiction in the present case."

The act of March 3, 1863, "amending section seven hundred and sixty-four of the Revised Statutes," 23 Stat., 437; Supp. R. S., 485, 2d ed., was referred to in the margin of *Wales v. Whitney*. The Revised Statutes of the United States and the Revised Statutes of the District were approved June 22, 1874, and section 764 of the former provided for an appeal to the Supreme Court "in the cases described in the last clause of the preceding section." The words "in the last clause" operated as a limitation and by the amendatory act were stricken out. By the acts of August 29, 1842, Ch. 257, 5 Stat., 539, and of February 5, 1867, Ch. 28, 14 Stat., 385, an appeal from the judgments of the Circuit Courts in habeas corpus cases was allowed to this court, and by section 11 of the act of March 3, 1863, Ch. 91, 12 Stat., 764, the same provision was made in relation to the judgments, orders or decrees of the Supreme Court of the District, as is now contained in section 846 of the District Re-

vised Statutes. And as section 764 of the Revised Statutes and said section 846 were contemporaneously enacted, it was assumed that striking out the restrictive words from section 764 should be allowed like effect upon section 846. The question of jurisdiction was not argued, and no reference was made to the act of March 3, 1885, regulating appeals from the Supreme Court of the District (23 Stat., 443), and providing that no appeal or writ of error should be allowed from its judgments or decrees unless the matter in dispute exclusive of costs should exceed the sum of five thousand dollars, except in cases involving the validity of any patent or copyright, or in which the validity of a treaty or statute of, or an authority exercised under, the United States, was drawn in question.

The act of March 3, 1891, was passed to facilitate the prompt disposition of cases in this court and to relieve it from the oppressive burden of general litigation by the creation of the Circuit Courts of Appeals and the distribution of the appellate jurisdiction. By sections five and six, cases of conviction of a capital or otherwise infamous crime are to be taken directly to this court, and all other cases arising under the criminal laws to the Circuit Courts of Appeals. Sections thirteen and fifteen refer to appeals and writs of error from the decisions of the United States Court in the Indian Territory and the judgments, orders and decrees of the Supreme Courts of the Territories. No mention is made of the Supreme Court of the District of Columbia, and we perceive no ground for holding that the judgments of that court in criminal cases were intended to be embraced by its provisions.

The conclusion is that we have no jurisdiction to grant the writ applied for, and the petition is therefore

Denied.

—————
NEGOTIABLE INSTRUMENT—Gambling contract.—A person owning two notes indorsed thereon a guaranty of payment, and transferred them to another in payment of a void grain gambling debt. The latter deposited the same with a bank as collateral security for a valid debt, less in amount than the face of the notes. The bank took them without notice of the gambling transaction, and thereafter recovered a judgment for their full value against the guarantor: *Held*, that this judgment was conclusive between the bank and the guarantor, to the amount of the debt secured, notwithstanding that Rev. St. Ill., Ch. 38, §§ 130, 131, provide that all instruments and judgments given in consideration of gambling contracts may be set aside.—Pearce v. Rice, U. S. S. C., 12 S. C. Rep., 130.

Carriers of Passengers—Ejection of Passenger—Action for Damages.

In *Serwe v. Northern Pac. RR. Co.*, 50 N. W. Rep., 1021, the Supreme Court of Minnesota (Jan. 18, 1892), held, that where a passenger on a railway train who holds a ticket entitling him to ride, is wrongfully expelled from the train by the conductor before reaching his destination, the indignity of being expelled and injury to health caused by exposure to the weather, if the proximate and natural consequence of the expulsion, are proper elements of compensatory damages. An action to recover damages in such a case, although arising on a contract, sounds in tort, or what is called “an action for tort founded on contract.”

In that case the cause of action alleged in the complaint was that the plaintiff, having purchased a ticket over defendant's road from Butte, Mont., to St. Paul, and having taken passage for his destination on one of defendant's regular passenger trains, and having on demand delivered his ticket to the conductor, the latter refused to accept it in payment of his fare, and required and compelled him, against his will, to leave the train at a station ten miles out from Butte. The ticket, which was in evidence, showed on its face that it was sold at reduced rates, and was not transferable; that is, could only be used by the original purchaser. Defendant's contention was that the conductor had a right to refuse to accept the ticket, and to eject the plaintiff from the train, because he was not the original purchaser, but had bought it from a “scalper.” But the assumed facts were not proved.

The court say, by MITCHELL, J.:

“The evidence justified, if it did not require, a finding that plaintiff had the right to ride on the ticket, and consequently that the act of the conductor in compelling him to leave the train was unlawful. No physical force was used, and there was no evidence that the conductor was actuated by malice. His act was simply a mistake or blunder, he having obtained the impression that the plaintiff had bought the ticket from a scalper, because his name and that of the witness to his signature were written with different inks. The plaintiff was, therefore, entitled to only compensatory, as distinguished from punitive damages.

“The next question is, what elements of damages are proper to be taken into consideration in such a case? As bearing upon this subject, counsel for defendant has discussed at some length the question whether this is an action ex

contracto or an action *ex delicto*. Inasmuch as the conductor did nothing but what he would have had a right to do had plaintiff no right to ride on the ticket, it is evident that plaintiff could not have maintained the action at all without pleading and proving his contract with the defendant, and its breach either by malfeasance or nonfeasance. In other words, an action could not have been maintained for a tort simply without reference to the contract between the parties. In that sense, it is an action arising on a contract. But it is not an action on the contract, properly so called. The gist or gravamen of it is a tortious act which constituted a breach of the contract. It is what is sometimes called 'an action for tort founded on contract,' or 'an action *ex quasi contractu*.' In considering the measure of damages and the elements of damage proper to be considered, the courts in this country have almost universally treated such actions as sounding in tort, and have held that the passenger who was wrongfully ejected from the train, could recover all damages sustained by him, as the direct and natural consequence of the wrongful act, such as the indignity of being ejected and injury to the health through exposure to the weather.

"This is the rule recognized and adopted by this court in *Carsten v. Railroad Co.*, 44 Minn., 454, 47 N. W. Rep., 49, and *Hoffman v. Same*, 45 Minn., 53, 47 N. W. Rep., 312. The leading case in England on the subject is the *Hobbe Case*, L. R., 10 Q. B., 111, which, however, was disapproved in *McMahon v. Field*, 7 Q. B. Div., 591. While the authority of that case has been generally acknowledged, at least nominally, in this country, yet, as Mr. Sedgwick in his work on Damages (section 868) remarks, the practical effect of it has been virtually neutralized in most jurisdictions by holding, as already stated, that actions like the present sound in tort. But it seems to us that very often a great deal of time and learning has been unnecessarily expended in discussing the exact nature of such an action. The important question, after all, is whether the injury was the direct and proximate, or only the remote, consequence of the wrongful expulsion.

"The only other question is whether the damages were excessive. The jury awarded plaintiff \$775. This was reduced by plaintiff to \$550, in accordance with a condition attached to the order of the court denying a new trial. The evidence tends to show that plaintiff was quite ill, and under a physician's care, and was going to his father's, in Wisconsin, to recuperate his health; that he was put off the train in the

night, in cold weather, in November, at a small station in the mountains, without hotels or lodging houses; that he had to find his way back to Butte in the night time on a freight train, and then walk a mile to reach shelter; that the exposure and anxiety considerably aggravated and prolonged his sickness. While the verdict still seems rather large, yet, under all the circumstances, we do not feel warranted in disturbing it."—*Weekly Law Bulletin*. Feb. 29, 1892.

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MASTER AND SERVANT—Fellow Servants.—Where the general work in which several servants are engaged includes the construction or preparation of the appliances with which they are to work, as where they are engaged in erecting a building, and they construct the scaffold on which they are to stand in doing their work, they are to be deemed fellow servants, as well in respect to the negligence of one of them in constructing such appliances as in respect to negligence in doing any other of their work. *Marsh v. Herman*, Minn., 50 N. W. Rep., 611.

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CONTRACT—Rescission.—When a person purchases a tax title to lands upon the advice of his attorney, whom he has brought from a distant State to investigate the county records, and who has spent three days in so doing, a portion of the time in the presence of the defendants, who request that the examination be full, he is chargeable with knowledge of all that the records disclose, and cannot afterwards rescind the contract on the ground of misrepresentation as to any matters shown thereby. *Farnsworth v. Duffner*, U. S. S. C., 12 S. C. Rep., 164.

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A PASSENGER who refuses to pay fare or leave the train, and who furnishes only a ticket which does not on its face entitle him to passage on that train, although he was told by the carrier's agent that he could ride upon it, cannot recover for injuries received in putting him off the train without more force than is necessary. He should either pay his fare, or quietly leave the train and resort to his appropriate remedy for any damages sustained. *Peabody v. Oregon RR. and Nav. Co.*, (Or.) 44 Alb. L. J., 127; 26 Pac., 1053.

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ACKNOWLEDGMENT of liability by an indorser will not prevent his discharge for lack of notice of dishonor, unless made with full knowledge of his discharge. *Rosson v. Carroll*, Tenn., 43 Alb. L. J., 493; 16 S. W., 66.

High Court of Justice.

REGINA vs. MOORE AND ANOTHER.
(CROWN CASES RESERVED.)

January 30—AFFIRMATION INSTEAD OF OATH—

GROUNDS OF OBJECTION TO TAKING OATH
—OATHS ACT, 1888, 51 AND 52 VICT., CH. 46
—QUESTIONS SUGGESTED BY SECTION 1 BEFORE AFFIRMATION PERMITTED—DUTY OF MAGISTRATE.

Coram: HAWKINS, J., WILLS, J., CHARLES, J., LAWRENCE, J., and WRIGHT, J.

This was a case stated by the deputy chairman of the North London Court of Quarter Sessions, before whom two persons had been convicted upon an indictment for larceny of £4 11s. from the person of one Lahkin Dass, an Indian student for the bar, but not a Mahomedan.

By section 1 of the Oaths Act, 1888, (51 and 52 Vict., ch. 46): "Every person upon objecting to be sworn, and stating as the ground of such objection, either that he has no religious belief or that the taking of an oath is contrary to his religious belief, shall be permitted to make his solemn affirmation."

Before giving their evidence the prosecutor and another Indian student (not a Mahomedan) called as a witness were each of them asked by the usher whether they wished to be sworn on the Bible or on the Koran, and, upon their severally answering "No," the usher asked them if they wished to affirm, when they each replied "Yes." In cross-examination the prosecutor said that he had a religion, that he believed in the existence of a God, respected all religious things, could swear upon any religious book which recognized the existence of a God, and that he was sworn at the Police Court on the Bible. The witness said, in cross-examination, that he was a Sikh and had a religion, and that in India he could be sworn upon a book called "Gnintham."

In addressing the jury the prisoner's counsel stated that the prosecutor and the witness could not be indicted for perjury if their evidence was false, as they had not been sworn.

The learned deputy chairman made no comment, and gave no direction to the jury as to the witnesses having affirmed instead of being sworn, and the jury convicted the prisoners. He held, first, upon the objections being taken after verdict, that as the witness had been offered the Bible and the Koran for the purpose of being sworn, they had elected to take the benefit of section 1 of the Oaths Act, 1888, and that it was unnecessary to put specific questions

to them as to whether they had an objection to be sworn, or that they had no religious belief, or that the taking of an oath was contrary to this belief; and, secondly, that the objection should have been taken at the earliest possible moment.

The questions for the opinion of the Court for Crown Cases Reserved were as follows: (1) Whether the learned deputy chairman was right in admitting the witnesses to give evidence under the circumstances, or whether he or the usher who swore them was bound to put the questions suggested in section 1 of the Oaths Act before allowing an affirmation; (2) whether he was right in holding that counsel for the prisoners was too late in taking his objection.

The court held, upon the first question, that the learned deputy chairman was, under the circumstances, wrong in admitting the evidence, and that it was his duty to ascertain before admitting it whether the questions suggested by section 1 of the Oaths Act, 1888, had been put; upon the second question, that the objection was certainly not taken too late.

Conviction quashed.—London Law Journal.

MUNICIPAL CORPORATIONS—NEGLIGENCE—VAULT UNDER SIDEWALK.—An owner of a city lot, with the consent of the city authorities, constructed a vault under the sidewalk in front of his lot. Held, that the municipal authorities were liable and not the owner, for injuries sustained by a person falling into the vault on account of the breaking of a flagstone over it, where no actual negligence of the lot owner is shown. Also that consent of city to the construction of such vault may be implied from nine years' acquiescence. *Babbage v. Powers*, 29 N. E. Rep., 132. (N. Y. App.)

PARTNERSHIP—Party alleging its existence must prove it affirmatively.—In an action against several joint defendants based on their alleged liability as partners, the burden of proof is upon the plaintiff to show the existence of a partnership, and, in the absence of such proof, the defendants cannot be required to make any answer at all. It is therefore error for the trial judge to charge the jury in such a way as to lead them to believe that the defendants are liable unless they show certain facts inconsistent with the partnership relation, when nothing tending to show that relation has been proved by the plaintiff. *Halstead v. Curtis*, S. C. Pa., 48 Phila. Leg. Int., 516.

Law Blanks at the Law Reporter 503 E.

Supreme Court of New York.
SPECIAL TERM.

CATHARINE F. GRIFFING
 v.

THE MAYOR, ETC., OF THE CITY OF NEW YORK AND THE CITY OF BROOKLYN.

In a suit for damages for personal injuries, brought against the Mayor, etc., of the City of New York, and the City of Brooklyn, before the passage of chapter 128, Laws 1891, giving the custody and control of the New York and Brooklyn Bridge to trustees instead of to the cities of New York and Brooklyn, and making such trustees responsible for all debts and liabilities of the bridge previously accrued. Held, that, as such statute did not expressly authorize the discharge of the original defendants from the action and the substitution of the trustees of the New York and Brooklyn Bridge in their stead, such substitution should not be ordered when issue had been joined and the cause was merely awaiting trial.

Mr. Justice PATTERSON delivered the opinion of the court:

The object of this motion is to have the present defendants discharged from the action and the trustees of the New York and Brooklyn Bridge substituted in their place. It is made after issue joined in an action to recover damages for personal injuries alleged to have been sustained by the plaintiff through the negligence of the defendants, or their servants, while they were the responsible parties in charge and control of the bridge. The right to this compulsory substitution is asserted by the moving parties, under the provisions of chapter 128 of the Laws of 1891, by which statute the control and operation of the bridge was taken away from the two municipalities and transferred to the bridge trustees.

By section 7 of the Act of 1891 it is provided that, after the passage thereof, neither the Mayor, Aldermen and commonalty of the city of New York, nor the city of Brooklyn, shall be liable for any matter or thing, claim or demand, growing out of the New York and Brooklyn Bridge. It is also provided, by the same section, that the trustees of the New York and Brooklyn Bridge shall succeed to all liabilities of the two cities connected with the bridge, and that all claims and demands growing out of the bridge upon contracts, and for negligence, and for wrongs, which heretofore might be prosecuted against the two cities, or either of them, shall be prosecuted against the trustees of the New York and Brooklyn Bridge, and they shall be liable therefor in their corporate capacity, and they shall sue and defend all actions and proceedings in and by their corporate name (the trustees of the New York and Brooklyn

Bridge), and shall pay all damages and judgments out of the moneys they receive for tolls, fares and rents.

It is claimed, on behalf of the moving parties, that, under these provisions of the statute, it is perfectly clear that the substitution asked for should be granted; that the provision for the succession to liability as to existing claims devolves upon the trustees the sole responsibility therefor, and that provision is made in the act for the payment of any judgment that may be recovered on such claims out of the specific fund, to wit: the receipts of the bridge.

I think it may be well said that, under this enactment, the trustees have become liable in the first instance for all the contracts and for all the actionable wrongs of the two present defendants, respecting the bridge; but that view does not present the precise question now up for decision, and that is whether, situated as this action is, there can be an absolute change of defendants so as to dismiss the two cities and substitute the bridge trustees.

We may consider the nature of the liability as being statutory, and we may assume that the legislature may change the method of enforcement of such liability, but there is nothing in this Act of 1891 which, by direct legislation, authorizes the anomalous procedure which the court is now asked to sanction, and such a power should not be considered as given by implication.

When a party's rights have accrued, have been brought before the court, and issue has been joined, there is no authority to deprive him of his right against a defendant, unless there be an express provision of law to that effect. It is true that it has been decided by the Special Term of this court, in the Maguire Case, that an action against the bridge trustees for an accident happening before the passage of the Act of 1891 was properly brought, but nothing further has been decided, and that case is not analogous to this.

Interpretation of statutes, relating to the bringing in of parties, has been given by the Court of Appeals in this State, and even where what would seem to be the ample power given by the Code of Civil Procedure, with respect to that subject, it has been held that there is no authority to discharge all the defendants, and substitute some other person or persons in their place. N. Y. S. M. P. A. v. The Remington Ag. Works, 89 N. Y., 22.

It is insisted, however, on the part of the defendants, that this motion should be granted upon the same theory as the substitution of

parties was allowed in *Hein v. Davidson*, 96 N. Y., 175. In that case it was held that the provisions of the Code there referred to, freeing the sheriff from liability for an unlawful seizure of property in certain actions, and allowing the sureties to be brought in as the sole defendants, were lawful; that the injured parties' right of action was not taken away, but the form of the remedy only was changed; but it must be borne in mind that there was an express provision of law which allowed the substitution in such cases, and that here it is only left to inference from the terms of the statute.

In *Hayes v. Davidson*, 98 N. Y., 20, which presented to the Court of Appeals the same question as was considered in *Hein v. Davidson*, *supra*, it was said by the court that the statute was clearly in derogation of the common law and common right, and in the absence of the special rule, provided by the code, would, by settled rules of interpretation, be strictly construed and confined to provisions and clear import; that the act was one of doubtful propriety, and the cases must be rare when any useful purpose can be served by depriving a party of his lawful remedy against the individual who injured him, and compelling him to litigate his demands with persons who apparently were not participants in the wrong out of which the action arose, and as to whose liabilities and their extent many embarrassing questions may arise. I think that this statute, respecting the devolution of liability on the bridge trustees, should be construed with the utmost strictness as being in derogation, so far as an application of this character is concerned, of common law and of common right.

If the two cities desire to have the liability of the bridge trustees enforced, in the first instance, and in this action, it is only necessary for them to have such trustees brought in, as additional parties, a practice which seems to be fully justified by what was decided by the Court of Appeals in the case of *Prouty v. Lake Shore RR. Co.*, 85 N. Y., 272.

The motion must be denied, with \$10 costs.

COMpromise—Enforcement.—Where defendants convey land to plaintiff, with covenants of title and warranty, and afterwards discover that they had previously sold the same land to another, an agreement of compromise for the breach of covenants, if made in good faith, is binding, although the amount agreed to be paid by defendants exceeds the purchase price of the land, with interest. *Smith v. Farra*, Oreg., 28 Pac. Rep., 241.

FRAUDULENT CONVEYANCES.—In an action to restrain the sale of land on execution against plaintiff's husband, plaintiff claimed the land under a conveyance made by the husband pending the action in which the judgment was obtained. The evidence proved that part of the money with which the husband purchased the land was obtained from the wife, and that, while the litigation between defendant and the husband was in progress, plaintiff demanded of her husband and obtained the conveyance of the land. At that time her claim against her husband amounted to \$1,700, while the value of his interest in the land did not exceed \$600. Held, that the debt due plaintiff by her husband was bona fide, and that the evidence did not show any intent on her part to hinder, delay, or defraud her husband's creditors. *Neighbor v. Hoblitzel* (Iowa) 51 N. W. Rep., 53.

UNRECORDED DEEDS—RIGHTS OF PURCHASER.—Where the title to real estate appears of record to have been in an intestate at the time of his decease, and thereafter the property has been conveyed by the heir at law to a bona fide purchaser for value, the latter acquires the title, as against a grantee named in an unrecorded deed executed by the intestate in his lifetime.

Taxes paid upon the common property, or an amount paid to procure a conveyance from one who claims title to the same adversely and under a tax deed, by a tenant in common, cannot be made a charge upon the estate and interest of a co-tenant after such estate and interest have passed into the hands of a purchaser without notice.

Held, that the record of the tax deed and of the conveyance from the grantee therein named would not be notice of such a claim. *Welch v. Ketcham*, Minn., 51 N. W. Rep., 113.

WESTERN JUSTICE.—To Officer: "What is this man charged with?"

"Bigotry, yer honor."

"Bigotry? Why, what's he been doing?"

"Married three women, yer honor."

"Three! That's not bigotry. That's trigonometry."

ATTORNEY AND CLIENT—Equitable Assignment.—An attorney agreed with his client to conduct certain litigation, and the client agreed that the attorney should receive as his compensation a specified percentage of the amount recovered, reserving the right within 60 days to substitute a cash fee in place of such percentage: Held, that the agreement constituted an equitable, conditional assignment to the attorney of an interest in the subject of litigation. *Holmes v. Evans*, N. Y., 29 N. E. Rep., 233.

VENDOR AND VENDEE.—Plaintiff contracted to purchase land of the defendant. Time was the essence of the contract, and it was agreed that if certain deferred payments were not made when due, plaintiff would forfeit the money paid down and all her rights under the contract. Plaintiff was unable to meet the first deferred payment, and it was further agreed that if a sum of money less than the whole amount due should be paid on the following Saturday defendant would accept it as full payment. Plaintiff did not make this payment, nor did she claim that she made any tender thereof, but alleged that she was ready to make tender at the place where she understood such payment was to be made. The evidence on this point was conflicting, defendant testifying that another place was the place of payment. Held, that the court was justified in finding that payment was to be made at the place testified to by defendant. *Drown v. Ingels et al.* (Wash.) 28 Pac. Rep., 758.

INSURANCE.—The conditions of an insurance policy rendered it void if the insured obtained additional insurance in excess of \$18,000, and provided that in case of loss copies should be given of the written portions of all policies for additional insurance, but stated there had been no violations of the conditions of the policy. Defendant received information of the excess from its agent, and required plaintiffs to furnish additional proofs, giving copies of the written portions of all other policies on the property, which he did at an expense of \$25. Held, that this did not bring the case within the rule that if an insurance company, during transactions or negotiations after knowledge of forfeiture, recognizes the policy as valid and subsisting, and requires the insured to incur trouble or expense, it thereby waives the forfeiture. *Antis v. Western Assurance Co.* (Iowa) 51 N. W. Rep., 7.

EMINENT DOMAIN.—The jury should not disregard what they have learned by their inspection of the ground because it happens to be at variance with the statement or opinions of the witnesses. The true rule in such cases is that, in estimating the damages, they shall consider the testimony as given by the witnesses, in connection with the facts as they appeared upon the view; and upon the whole case, as thus presented, ascertain the difference between the market value of the property immediately before and immediately after the land was taken. *Gorgas v. P. H. & P. RR. Co., S. C. Pa.*, 48 Leg. Int., 499.

IT is perhaps a little elementary, but vice and immorality are clothed with legal rights and are protected by the organic law of the land. A man has a right to drink alcoholic liquors whenever he chooses to do so; being sober to get drunk—but he has no right to be drunk. He may drink, get drunk, but must not be drunk. That is unlawful.—*Ex.*

English Court of Appeal.

THE STAMFORD, SPALDING, AND BOSTON BANKING COMPANY (LIM.) v. SMITH.

Decided February 16, 1892.

Lord HERSCHELL, LINDLEY, L. J., KAY, L. J., sitting.

LIMITATION OF ACTIONS—PART PAYMENT—PROMISSORY NOTE—PAYMENT TO PAYEE AFTER INDORSEMENT.

APPEAL by plaintiffs from a decision of WILLIAMS, J.

The action was brought on a promissory note made by the defendant in favor of one Konow. The defendant pleaded the Statute of Limitations. Konow indorsed the note and handed it to the plaintiffs as security for an overdrawn account. In 1885, after the indorsement and within six years before the action was commenced, the defendant paid 50£ to Konow, who communicated the fact to the plaintiffs. The defendant afterwards made other payments to Konow sufficient to discharge the note if Konow had been the holder. Of these payments the plaintiffs had no notice, and the defendant had no notice that Konow was not the holder of the note.

The plaintiffs set up the payment in 1885 as a part payment, taking the case out of the statute.

WILLIAMS, J., held that the action was barred. Their lordships held that the payment of £50 to Konow was not made to him as agent for the plaintiffs; that there was no part payment; and that the action was barred.

Judgment affirmed.

—*Law Journal, London*, Feb. 20, 1892.

THE COURTS.

Supreme Court of the District of Columbia.

IN EQUITY.—New Suits.

March 30, 1892.

13825. C. W. Pettit v. Geo. J. Seufferle et al. For release. Com. sol., R. T. Morsell.

18826. Cornelia Tyler et al. v. W. G. Talliaferro et al. To cancel deed for pt. lot 3, Sec. 9, Barry Farm. Com. sols., A. C. Richards and Cole & Cole; Defts. sol. John A. Moss.

13827. Oliver C. Block v. Jacob Robinson et ux. Judgment creditors' bill. Com. sol., F. T. Browning.

March 31.

13828. D. C. Lobb. Alleged lunatic upon petition of Harry W. Lobb. De lunatico inquirendo. Com. sol., L. C. Williamson.

April 1.

13830. E. E. Longley v. May R. Longley. For divorce. Com. sol., L. C. Williamson.

13830. Annie M. Barry et al. v. Patrick Barry et al. For partition by sale. Com. sol., J. J. Darlington.

13831. Clarence Roach. Alleged lunatic upon petition Commissioners D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazleton.

13832. Ellen Oliver. Alleged lunatic upon petition Commissioners D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazleton.

13833. Christine Matti. Alleged lunatic. De lunatico inquirendo. Com. sol., Geo. C. Hazleton.

13834. Farmer Harris. Alleged lunatic. De lunatico inquirendo. Com. sol., Geo. C. Hazleton.

13835. Mary F. Kengla. Alleged non compos mentis; upon petition of Jacob Kengla. De lunatico inquirendo. Com. sol., J. J. Darlington.

April 2.

13836. Minnie Agnes Park v. Harry Park. For divorce. Com. sol., C. Carrington.

April 4.

12837. Alic V. Mason v. Geo. W. Mason. For divorce. Com. sol., C. Carrington.

13838. Catherine Makely et al. v. W. L. Argue et al. For partition of real estate sub lot 7, sq. 366. Com. sol., Edmund Burke and Carusi & Miller.

13839. Jno. B. Moore v. H. A. Wharton et al. To be relieved from executorship. Com. sols., Webb & Webb.

AT LAW—New Suits.

32772. Ellen C. Wight v. A. B. Finney. Appeal. Defts. atty., W. P. Williamson.

32773. M. & P. Metzger v. Mattie W. Morgan. Appeal. Defts. atty., W. Wheeler.

32774. A. S. Clarke v. A. P. Dane. Note and acct., \$173.50. Pliffs. atty., A. H. Bell.

32775. Wheatley Bros. v. W. G. Widmeyer. Judgment of Justice Taylor, \$95.

32776. H. E. Ridenour v. N. Horn. Notes, \$400. Pliffs. attys., Lipscomb & Woodward.

April 1.

32777. J. H. Adriaans v. Isaac S. Lyon. Appeal.

32778. C. D. Parsons v. D. C. Certiorari. Pliffs. attys., Cole & Cole.

32779. Whiting & Waples v. J. J. Neitzey. Acct., \$131.56. Pliffs. attys., H. W. Garnett and D. S. Mackall.

32780. E. T. R. Jones et al. v. H. J. Lauck. Certiorari. Defts. atty., J. Thos. Sothonor.

Legal Notices.

Rule of Court.

RULE 20. * * * * Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

FIRST INSERTION.

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters of Administration on the personal estate of CELIA HOFFA, late of the District of Columbia, deceased.

All persons having claims against the said deceased, are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 31st day of March, 1892.

FRANK HOFFA,
14 Leon Tobriner, Proctor.

409 7th St., n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, Holding a Special Term for Orphans' Court Business.

April 2, 1892.

In the case of JOHN M. Langston. Administrator of SARA K. FIDLER, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 3rd day of April, A. D. 1892, at one o'clock p. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter, previous to the said day.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
14 No. 2727. Ad. Doc. 18.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Holding a Special Term for Orphans' Court Business.

April 1, 1892.

In the matter of the Estate of JAMES ANDERSON, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Charles Wells.

All persons interested are hereby notified to appear in this Court on Friday, the 29th day of April next, at one o'clock, p. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court: A. B. HAGNER, Justice.
L. P. WRIGHT,
Register of Wills for the District of Columbia.
14 Frank T. Browning, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Holding a Special Term for Orphans' Court Business.

April 1st, 1892.

In the matter of the Estate of THOMAS A. MITCHELL, late of Washington, D. C., deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration c. t. a. on the Estate of the said deceased, has this day been made by Edwin B. Hay.

All persons interested are hereby notified to appear in this Court on Friday, the 29th day of April next, at one o'clock p. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration c. t. a. on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Washington Post previous to the said day.

By the Court: A. B. HAGNER, Justice.
L. P. WRIGHT,
Register of Wills for the District of Columbia.
14 No. 4907. Ad. Doc. 17.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of WILLIAM COPPINGER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of March, 1892.

MARTHA A. M. COPPINGER,
14 Reginald Fendall, Proctor. 226 E St., n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

The 1st day of April, 1892.

Petition of Thomas A. Ryan for } No. 13,789. Eq. Doc. 83.
leave to change his name.

On motion of the petitioner, by Mr. E. M. Hewlett, his solicitor, it is ordered that notice of the filing of this petition be printed in the Washington Law Reporter and in The Evening Star, once a week for each of three consecutive weeks, before the 1st day of May, 1892.

The object of this petition is for leave to the petitioner to change his name from Thomas A. Ryan to Frank A. Carter.

By the Court.

A. B. HAGNER, Justice.

True copy. Test:

J. R. Young, Clerk.

14

By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

The 30th day of March, 1892.

Katie F. Christine } v. No. 13,290. Eq. Docket 82.

Albert B. Christine.

On motion of the plaintiff, by Mr. A. B. Williams, her solicitor, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a decree of divorce from the bond of marriage with the defendant on the ground of desertion.

By the Court.

A. B. HAGNER, Justice, &c.

True copy. Test:

J. R. Young, Clerk, &c.

14

By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

Holding Special Term for Orphans' Court Business.

In the matter of the Estate of HARVEY B. BESTOR, late of the District of Columbia, deceased.

Application for the probate of the last Will and Testament of the said deceased, bearing date December 25, 1891, filed with the Register of Wills for this District and now exhibited to the Court, has been made by Henrietta M. Fowler, a sister of said deceased, and the executrix named in his Will.

All persons are this 1st day of April, 1892, hereby notified to appear in this court on Friday, the 29th day of the present month of April, at 1 o'clock p. m., to show cause why the said Will should not be admitted to probate and record.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day, or personal notice be served upon the absent heir before said day.

By the Court.

A. B. HAGNER, Justice.

Test:

L. P. WRIGHT.

Register of Wills for the District of Columbia.

14 No. 4795. Ad. Doc. 17. Edwards & Barnard, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Sitting as an Orphans' Court.

In the matter of the application of Charles N. Pomeroy for the removal of Willis H. Reynolds as Administrator of the estate of CHARLES POMEROY, deceased.

Upon consideration of the petition of Charles N. Pomeroy, for the removal of Willis H. Reynolds as administrator of the estate of Charles Pomeroy, deceased, it is this 1st day of April, 1892, ordered, that the said Willis H. Reynolds, Administrator as aforesaid, show cause on or before the 6th day of May next, why he should not be removed as such administrator for failure to file an inventory as required by law.

Provided that a copy of this order be published once a week for three weeks in the Washington Law Reporter and the Washington Post before said day.

A. B. HAGNER.

A True Copy. Test:

L. P. WRIGHT.

Register of Wills, D. C.

Legal Notices**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of JAMES H. WHITE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 25th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of March, 1892.

A. E. L. KESE, 14 No. 416 5th St., Columbia Law Building.

This is to Give Notice

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters of Administration c. t. a. on the personal estate of BENJAMIN COOLEY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under their hands this 1st day of April, 1892.

THE WASHINGTON LOAN & TRUST CO. 14 John B. Larner, Proctor. By W. B. Robison, Sec'y.

This is to Give Notice

That the subscriber, of Westborough, Mass., has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters of Administration on the personal estate of WILLIAM F. HOLTON, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day of April, 1892.

RUSSELL F. HOLTON, Care of H. M. Baker, 1411 F St., n. w.

14 Henry M. Baker, Proctor.

This is to Give Notice

That the subscriber, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of LOUIS W. SINSABAUGH, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 29th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of March, 1892.

SARAH S. SINSABAUGH, 14 John Ridout, Proctor. 1747 Q St., n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

March 30th, 1892.

In the case of Benjamin P. Snyder, Executor of WILLIAM N. WATERS, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 29th day of April, A. D. 1892, at one o'clock p. m. for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and the Evening Star previous to the said day.

Test:

L. P. WRIGHT.

Register of Wills for the District of Columbia.

14 R. Ross Perry, Proctor. No. 3932. Ad. Doc. 15.

Legal Notices.**This is to Give Notice**

That the subscriber, of Philadelphia, Penna., has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of HENRY SHARPLESS, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of April, 1892.

PHEBE E. SHARPLESS,
14 Gordon & Gordon, Proctors. 1528 T St., n. w.

This is to Give Notice

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters Testamentary on the personal estate of MARTIN L. HIGGINS, late of the District of Columbia deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 4th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 4th day of April, 1892.

NATHANIEL FREEMAN,
SAMUEL WALLACE,
14 114 D St., n. w., City.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 5th day of April, 1892.

James H. Williams } No. 13,715. Eq. Docket 38.
v.
Minnie E. Williams. }

On motion of the plaintiff, by Mr. Campbell Carrington, his solicitor, it is ordered that the defendant, MINNIE E. WILLIAMS, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for an absolute divorce upon the ground of wilful desertion and abandonment by the party complained of against the party complaining for the full uninterrupted space of two years before the beginning of this suit.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
By M. A. Clancy, Asst. Clerk.

SECOND INSERTION.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**
Holding a Special Term for Orphans' Court Business.

March 25th, 1892.

In the case of James L. McLane, Executor of JOSEPH E. JOHNSTON, deceased, the Executor aforesaid has, with the approval of the court, appointed Friday, the 29th day of April, A. D. 1892, at one o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star previous to the said day.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
13 No. 4346. Ad. Doc. 16. Gordon & Gordon, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 28th day of March, 1892.

Robert Briscoe } No. 13,668. Eq. Docket 33.
v.
Lavinia Briscoe. }

On motion of the plaintiff, by Mr. Campbell Carrington, his solicitor, it is ordered that the defendant, LAVINIA BRISCOE, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for an absolute divorce upon the ground of wilful and uninterrupted desertion for over two years from the filing of the petition in this cause.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
By M. A. Clancy, Asst. Clerk.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,**

The 25th day of March, 1892.

Emma C. Goodman } vs. Charles B. Goodman. } No. 13,372. Eq. Docket 32.

On motion of the plaintiff, by Mr. A. B. Williams, her solicitor, it is ordered that the defendant, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a decree of divorce from the bond of marriage with defendant on the ground of desertion.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
13 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 24th day of March, 1892.

Albert F. Fox, Administrator of the Estate of Emmett Kennedy, vs. Thomas Pitchlynn. } No. 13,581. Eq. Doc. 38.

On motion of the plaintiff, by Messrs. Edwards & Barnard his solicitors, it is ordered that the defendants, ALICE BEVIL, EMMA GREEN, MOLLY FOLSOM, MINNIE SEMPLE, RHODA MORRIS, and DAVID FOLSOM, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to make distribution to the parties entitled, of the personal estate of the late Emmett Kennedy, deceased, now in the hands of the complainant.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
13 By M. A. Clancy, Asst. Clerk.

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business Letters of Administration on the personal estate of JANE E. GILES, otherwise called JENNIE E. GILES, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of February, 1892.
FENELON B. BROCK,
13 Geo. L. Clark, Proctor. 26 Atlantic Bldg.

This is to Give Notice

That the subscriber of Washington City, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, letters Testamentary on the personal estate of ANN JOYCE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of March next; they may otherwise by law be excluded from all benefit of the said deceased.

Given under my hand this 19th day of March, 1892.
JOSE IGNACIO RODRIGUEZ,
13 No. 4891. Ad. Doc. 17. 2 Lafayette Square.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of ELIZABETH SMEDLEY BERRY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 26th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of March, 1892.
JAMES J. CAMPBELL,
13- Randall Hagner, Proctor. 926 New York Ave., n. w.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of JANE ROSS, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of March, 1892.

IRVING GIBSON,

13 J. H. Adriaans, Proctor.

710 15th St., n. e.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters Testamentary on the personal estate of CAROLINE C. ACKER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of March, 1892.

WALTER H. ACKER,

13

1008 F St., n. w.

THIRD INSERTION.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of HARRY J. REIDY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 27th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of February, 1892.

JOHN F. KELLY,

12 Albert Sillers, Proctor.

31 G Street, n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

March 18th, 1892.

In the case of Robert H. G. Dyson, Executor of TOBIAS C. JOHNSON, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 15th day of April, A. D. 1892, at one o'clock p. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test:

L. P. WRIGHT,
Register of Wills for the District of Columbia.
12 No. 4285. Admn. Doc. 16. Chas. H. Cragin, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

March 18th, 1892.

In the case of John F. Cook, Executor of ISAAC LANDIC, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 15th day of April, A. D. 1892, at one o'clock p. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test:

L. P. WRIGHT,
Register of Wills for the District of Columbia.
12 No. 4172. Admn. Doc. 16. Calderon Carlisle, Proctor.

Legal Notices**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**
Holding a Special Term for Orphans' Court Business.

March 18th, 1892.

In the case of The Washington Loan & Trust Co., Administrator of ANDREW McCALLUM, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 15th day of April, A. D. 1892, at 1 o'clock p. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched, otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star previous to the said day.

Test:

L. P. WRIGHT,
Register of Wills for the District of Columbia.
12 No. 4286. Admn. Doc. 16. John B. Lerner, Proctor

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters Testamentary on the personal estate of MARGARETHA VOLK, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 11th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 11th day of March, 1892.

GEO. C. WALKER,
514 12th St. n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 21st day of March, 1892.

Mary L. Davis } vs. } No. 13,504. Eq. Docket 33.
Samuel A. Davis. }

On motion of the plaintiff, by Mr. C. Maurice Smith, her solicitor, it is ordered that the defendant, cause his appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for a divorce *a vinculo matrimonii*, on the ground of desertion and abandonment for more than two years before the filing of the bill.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.

By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

March 18th, 1892.

In the matter of the Estate of HENRY R. CRONIE, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased, has this day been made by Mary J. Cronie.

All persons interested are hereby notified to appear in this Court on Friday, the 15th day of April next, at 1 o'clock p. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT,

Register of Wills for the District of Columbia.
12 No. 4885. Ad. Doc. 17.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of MARGARET L. HULSE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 7th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of March, 1892.

D. WEBSTER PRENTISS,
1101 14th St., n. w.

12 D. O'C. Callaghan, Proctor.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of SAMUEL THOMPSON, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of March, 1892.

JOHN A. BARTHEL,
12 John A. Barthel, Proctor.
221 4½ St., n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of WILLIAM MERCER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 12th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of March, 1892.

REBECCA D. MERCER,
Care of J. THOMAS SOTHORON,
12 J. Thos. Sothoron, Proctor.
412 5th St. n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court Business, Letters of Administration on the personal estate of MARGARET C. BARBER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of March, 1892.

JOHN A. BARBER,
12 Wm. L. Dunlop, Proctor.
3241 N St. n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

March 23rd, 1892.

In the matter of the estate of ELIZABETH THWAITES, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased, has this day been made by George Thwaites, husband surviving, who prays that said Letters may be granted to the Washington Loan & Trust Co.

All persons interested are hereby notified to appear in this Court on Friday, the 15th day of April next, at one o'clock p. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER and Evening Star previous to the said day.

By the Court.

A. B. HAGNER, Justice.

Test:

L. P. WRIGHT;

Register of Wills for the District of Columbia.
12 No. 4882. Adm. Doc. 17. John B. Larner, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

March 18th 1892.

In the matter of the Estate of FEARNLIEGH LEWIS MONTAGUE, otherwise known as ALMA WOODLEIGH, late of this District deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration on the Estate of the said deceased, has this day been made by William H. Veerhoff, a creditor.

All persons interested are hereby notified to appear in this Court on Friday, the 15th day of April, next, at 1 o'clock p. m., to show cause why Letters of Administration on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Washington Post previous to the said day.

By the Court.

A. B. HAGNER, Justice.

Test:

L. P. WRIGHT;

Register of Wills for the District of Columbia.
12 No. 4878. Ad. Doc. 17.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of CHARLES F. MOSEBY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of March, 1892.

her
MARY S. M. NASH,
mark

12 Gordon & Gordon, Proctors. 2713 Dumbarton ave.

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of GEORGE W. KNOX, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 18th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of March, 1892.

WILLIAM S. KNOX,
201 B St., n. w.

This is to Give Notice

That the subscriber, of Washington City hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of JOHN COX, late of Portsmouth, Virginia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 5th day of October, 1892, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of March, 1892.

REESE H. VOORHEES,
1406 G St., n. w.

12 S. P. Knut, Proctor.
No. 4612. Ad. Doc. 17.

This is to Give Notice

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphan's Court business, Letters Testamentary on the personal estate of EDWARD TEMPLE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 21st day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 21st day of March, 1892.

MARY J. G. TEMPLE,
MAHLON ASHFORD.

12 John Ridout, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

March 18th, 1892.

In the case of Thomas H. Tolson, Administrator of FRANCIS A. TOLSON, deceased, the Administrator aforesaid has, with the approval of the court, appointed Friday, the 15th day of April, A. D. 1892 at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test:

L. P. WRIGHT,

Register of Wills for the District of Columbia.
12 No. 4157. Admir. Docket 16. Randall Hagner, Proctor.

The Washington Law Reporter.

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[WEEKLY]

No. 15

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ERASTUS THATCHER, EDITOR.

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WASHINGTON, D. C., - - - APRIL 14, 1892

Writ of Error to State Courts.

The 25th Section of the Judiciary Act of September 24, 1789, 1 Stat., 85; Rev. Stat. U. S., Sec. 709, provides for writ of error to remove final judgments or decrees to the Supreme Court of the United States, from the highest court of a State, in which a decision in the suit can be had.

In case of Olney v. Arnold, 3 Dall., 308, 318, the Supreme Court of the United States rendered a decision, in August, 1796, construing this section of the Judiciary Act. And from that time to the present the section has been so frequently considered and passed upon by the Supreme Court that it would seem as if every question that could possibly arise under it had been decided.

In the case of Armstrong v. Treasurer of Athens Co., 16 Peters, 281, decided in January 1842, there is a clear statement as to what must appear upon the record in order to confer jurisdiction upon the Supreme Court of the United States. We quote from page 285 as follows :

"In order to give this court jurisdiction under the 25th Section of the Act of 1789, it must appear on the record itself to be one of the cases enumerated in that section and nothing out of the record certified to this court can be taken into consideration.

"This must be shown: First. Either by express averment or by necessary intention in the pleadings in the case.

"Or, secondly, by the direction given by the court, and stated in the exception.

"Or, thirdly, when the proceeding is according to the law of Louisiana, by the statement of facts, and of the decision, as usually made in such cases by the court.

"Or, fourthly, it must be entered on the record of the proceedings in the appellate court, in cases where the record shows that such a point may have arisen and been decided, that it was in fact raised and decided; and this entry must appear to have been made by the order of the court, or by the presiding judge by order of the court, and certified by the clerk, as a part of the record in the State court.

"Or, fifthly, in proceedings in equity, it must be stated in the body of the final decree of the State court from which the appeal is taken to this court.

"Or, sixthly, it must appear from the record that the question was necessarily involved in the decision ; and that the State court could not have given the judgment or decree, which they passed, without deciding it."

In Murdock v. City of Memphis, 20 Wall., 590, decided in 1874, Mr. Justice MILLER, in delivering the opinion of the court (page 617) said :

"The result of this reasoning is that the twenty-fifth section of the Act of 1789 is technically repealed, and that the second section of the Act of 1867 has taken its place. What of the statute of 1789 is embraced in that of 1867 is, of course, the law now, and has been ever since it was first made so. What is changed or modified is the law as thus changed or modified. That which is omitted ceased to have any effect from the day that the substituted statute was approved."

The Act of February 5, 1867, is found in 14 Stat., page 385. Section 709 of the Revised Statutes of the United States is the same as section 2 of the Act of February 5, 1867, as amended by "An act to correct errors and to supply omissions in the Revised Statutes of the United States," ap-

proved February 18, 1875. The amendments embraced in section 709 are on page 318 of 18 Statutes at Large.

Supreme Court of the United States.

Decided March 28, 1892.

Oscar Rice, plaintiff in error, v. Jane Sanger, administratrix. In error to the Supreme Court of the State of Kansas.

The CHIEF JUSTICE: This was an action commenced by one Rice against Sanger et al. in the District Court of Bourbon County, Kansas, wherein judgment was rendered February 27, 1888, in favor of plaintiff. The cause was thereupon taken by the defendants to the Supreme Court of that State, the judgment reversed, and the cause remanded for further proceedings in accordance with the views of the court as expressed in its written opinion. To review this judgment, a writ of error from this court was allowed, but after that the case went back to the State district court in accordance with the mandate of the Supreme Court, and was subsequently tried therein.

The judgment attempted to be brought here was not a final judgment, and the writ of error is dismissed.

Decided April 4, 1892.

Red River Cattle Co. v. Alfred Sully. In error to the Circuit Court of the United States for the Northern District of Texas.

The only errors assigned which might call for consideration depend upon the terms and the construction of a contract which does not appear in the record.

The judgment is therefore affirmed.

The State of Missouri ex rel., etc., v. Harris et al. In error to the Supreme Court of the State of Missouri.

The writ of error is dismissed because no Federal question is involved, upon the authority, among other cases, of Railroad Co. v. Rock, 4 Wall., 177, 181; Lehigh Water Co. v. Easton, 121 U. S., 388; N. O. Water

Works Co. v. Louisiana Sugar Refining Co., 125 U. S., 30; and Railroad Co. v. Todd Co., 142 U. S., 282.

Writ of error dismissed.

**Supreme Court of the District of Columbia.
IN GENERAL TERM.**

WILLIAM F. MORROW ET AL.

v.

EUGENE C. EDWARDS ET AL.

1. The Supreme Court of the District of Columbia, sitting in equity, has no power to dissolve a corporation, or to vacate its certificate of incorporation.
2. The Attorney General of the United States can, by proper proceedings, inquire into the legality of the incorporation, where the acts are said to be such as to forfeit the right to a continuation of the charter, or where the charter is procured by fraud.
3. Under the Statute, no certificate of incorporation should be recorded by the Recorder of Deeds, which adopts the same name that belongs to a corporation whose certificate has been previously recorded. If such second certificate is recorded, it is void because in contravention of the Statute.

In Equity. No. 12,504. Decided March 28, 1892.

THOMAS M. FIELDS, for complainant.
Messrs. A. H. BELL and H. E. DAVIS
for respondents.

The CHIEF JUSTICE delivered the opinion of the Court.

This is a suit in equity by William F. Morrow and thirty-four other persons against Eugene C. Edwards and three others as the incorporators of the Corcoran Cadet Corps.

The first clause of the bill alleges that the complainants are citizens of the United States, residents of the District and that they sue in their own right.

Second. That respondents are citizens of the United States, residents of the District of Columbia and are sued in their own right and as incorporators of the Corcoran Cadet Corps.

The bill alleges that on February 22, 1883, a voluntary association known as the Corcoran Cadet Corps was formed by some of the complainants and respondents and others. That on May 9, 1890, it was composed of complainants and respondents who represented, exclusive of the defendant Edwards, the whole membership. That in the year 1883 the association adopted by-laws and rules of order, and that it revised the same in 1887; that Article XV gives power to expel any member by a two-thirds vote of members present; that prior to May 5, 1890, respondent Edwards was elected captain of said corps, and entered upon the

performance of his duties. Because of his disagreeable and unmanly conduct he was requested to resign; he refused to do so, and was, on May 5, 1890, expelled from the corps by a vote of twenty to five, there being but few more than twenty-five men present, and the remainder not voting; that on May 9, 1890, a meeting was held at which it was unanimously decided to incorporate the corps with complainants, Garmer, Hinsch, and several others as incorporators, and that a certificate was prepared and executed to be recorded the morning of the next day. That respondents McIntosh and Edwards were present; Meyer and Vollten were not. McIntosh remained in the room throughout, but Edwards left, went to a window and there listened to the proceedings. McIntosh, Meyer and Vollten at this time were members in good standing; that on going to the Recorder of Deeds for said District about 10 o'clock a. m. of May 10, 1890, complainants found that at 9.45 a. m. a certificate had been filed by the respondents incorporating themselves as the Corcoran Cadet Corps. The respondents Meyer, Vollton and McIntosh were inveigled by Edwards into executing said certificate; that these acts of respondents were intended to defeat the unanimous resolution of the corps, and to perpetrate a fraud on complainants and the public; that afterwards respondents elected officers to conduct the affairs of the corporation, but in doing so ignored complainants, giving them no notice of meetings, nor in any manner recognizing the complainants as their associates or as entitled to the privileges by said act of incorporation conferred; that said act of incorporation was recorded in the "acts of incorporation" in the office of the Recorder of Deeds for said District, and the complainants said certificate was recorded in the same volume; that said corps owns personal property, consisting of uniforms, desks, carpet, tables, chairs, lockers, piano, etc., of the value of about \$3,000, all of which, except uniforms, are in possession of said Edwards, who has them locked up in the armory, and who refuses to admit complainants or to give them possession of their property.

The complainants pray, first for process; second that respondents certificate of incorporation be decreed to be for the equal benefit and advantage of complainants; that they be decreed members thereof in good standing, entitled to equal rights of membership therein with respondents; third,

that a receiver may be appointed to take charge of said personal property; that Edwards be ordered to deliver up the same to such receiver, to be held under direction of the court; and, fourth, for other and further relief, etc.

In the view that we have taken of this case it is hardly necessary to recite the answer which is quite lengthy; nor to refer to any great extent to the testimony which is voluminous. We are of the opinion that this bill is insufficient to authorize the court to grant relief with reference to the grievances which the complainants have set forth in their bill. The decree of the court below was of such a character as the court possibly, under a proper bill, might be authorized by the testimony in the case to render. We do not dispute that, but we think the attention of the court was never called to the absence of certain averments in the bill necessary to authorize it to grant the decree which it rendered. That decree held the act of the defendants in obtaining a certificate of incorporation to be fraudulent and void; and, secondly, it was held that the act of incorporation on the part of the complainants was a valid and legal proceeding and had the effect to create a corporation by the name of the Corcoran Cadet Corps, of which the complainants were incorporators and members.

To this there are two objections. First, this court has no power to dissolve a corporation. The sovereign power only can do that. The Attorney-General of the United States can by proper proceedings inquire into the legality of the incorporation, where the acts are said to be such as to forfeit the right to a continuation of the charter, or where the charter is procured by fraud; but this court, sitting as a court of equity, has no such power. Secondly, there is a provision in the statutes relating to the organization of corporations in the District of Columbia, to the effect that no certificate of incorporation shall be recorded by the Recorder of Deeds which adopts the same name that belongs to a corporation previously incorporated. Therefore the act of the complainants in filing their certificate of incorporation after a certificate had been filed by respondents assuming the same corporate name was void because in direct contravention of the provisions of the statute. Again, in order to obtain relief as to the property set forth in the bill, the corporation in whose possession it is alleged to be should be made a party defendant. The

special prayer of complainants is that they be decreed members of the corporation procured by the respondents in good standing with equal rights with the respondents. This court has no power to grant such a prayer. There is also a prayer for a receiver and that Edwards may be compelled to deliver to him the property to which complainants claim title, but there is no prayer for an adjudication of the title to the personal property. There is a great deal in this record about the organization of a military company. The Corcoran Cadet Corps resolved to become Company A of the National Guard, and they voluntarily enlisted, each individually, in the National Guard, becoming Company A, and the question as to whether or not the rights and property in relation to this voluntary association did not become merged into Company A of the National Guard was much discussed by counsel; but it is not necessary for us to discuss it at this time.

The order in the case will be, under the circumstances, that the decree below be set aside, and, inasmuch as the complainants by amendment may be able to present a proper bill, the cause will be remanded with leave to complainants to amend as they may be advised.

Supreme Court of the United States.

F. W. SHARON AND F. G. NEWLANDS,
TRUSTEES, APPELLANTS,
v.

J. RANDOLPH TUCKER ET AL.

1. Where a part of square numbered 151 in the city of Washington was held by open, visible, continuous and exclusive adverse possession for more than twenty years, to wit, from the year 1841 to the commencement of this suit, with a claim of ownership under a tax-title deed, the party in possession can stand on his adverse possession as fully as if he had always held the undisputed title of record. Statute 21 James I, Ch. 16.
2. This is not a bill of peace, nor an ordinary bill *qua timet*, but it is a suit to establish the title of the complainants as matter of record; and the court of equity has jurisdiction of the suit for that purpose, although the complainants are not in actual possession of the property—there being no controversy as to their title.

APPEAL from the Supreme Court of the District of Columbia.

This is a suit in equity to establish, as matter of record, the title of the complainants to certain real property in the city of Washington, constituting a part of square numbered one hundred and fifty-one, and to enjoin the defendants from asserting title to the same premises as heirs of the former owner.

The facts which give rise to it, briefly stated, are as follows: In 1828, Thomas Tudor Tucker died seized of the premises in controversy. He had, at one time, held the office of Treasurer of the United States, and resided in Washington, but at the time of his death he was a resident of South Carolina. The property did not pass under his will but descended to his heirs-at-law. It does not appear that after his death any of the heirs took possession of the property or assumed to exercise any control over it. In 1837 the square was sold for delinquent taxes, assessed by the city against "the heirs of Thomas T. Tucker," and was purchased by Joseph Abbott, then a resident of the city. The taxes amounted to \$38.76, and the sum bid by the purchaser was \$250. In 1840 a tax deed, in conformity with the sale, was made to Abbott purporting to convey to him a complete title to the square. It is admitted that the deed was invalid for want of some of the essential preliminaries in assessing the property and in advertising it for sale. It does not appear, however, that the purchaser had any knowledge of this invalidity. Early in the following year, 1841, he took possession of the square and enclosed it with a board fence and a ditch with a hedge planted on one side of it. It was a substantial enclosure, sufficient to turn stock and keep them away. He was a stable keeper, and, in connection with this business, cultivated the ground and raised crops upon it in 1841. From the time he took possession until 1854 the square was enclosed and each season it was cultivated. In 1854 he leased the square to one Becket for the period of ten years at a yearly rent of \$100. Becket took possession under his lease and kept the ground substantially enclosed, and he occupied and cultivated it from that time up to 1862. In the fall of that year soldiers of the United States, returning from the campaign in Virginia, were encamped upon the square, and, as it appears, they committed such depredations upon the fence, buildings, and crops that the lessee was obliged to abandon its cultivation. Abbott died in April, 1861, and, by his will, devised the square to his widow. In August, 1863, she sold and conveyed it to one Perry, and he kept a man in charge of the same, who lived in a small building which Becket had built and occupied during his lease of the premises under Abbott. In 1868, Perry sold the entire square to Henry A. Willard for the consideration of \$17,600. He divided the square into small lots for buildings for residences, and upon one side of the square, fronting on T street, erected twelve substantial dwelling-houses, which have

been since occupied up to the commencement of this suit.

In 1872, Willard sold and conveyed a portion of the square, the premises in controversy to J. M. Latta, trustee, for a valuable consideration, and from him the title has passed by regular conveyances to the complainants herein. From 1840 to 1863 the square was chiefly valuable for agricultural purposes, but since then, and especially of late years, its only value has been for buildings as residences, and has been so regarded by its owners. From 1840 up to the present time the taxes upon the property have been paid by Abbott and his successors in interest. None of the heirs of Mr. Tucker, nor any one claiming under the heirs, has paid or offered to pay any taxes assessed on the property, nor, since that date, up to the commencement of these suits, have any of the defendants therein or their predecessors in interest asserted any claim to the property or interest in it, or attempted in any way to interfere with its possession or control. Soon after the sale to Perry, in 1863, the tax deed was passed upon by eminent counsel in the District, the late Richard S. Coxe and James M. Carlisle, and the title by it was pronounced by them to be indisputable. It was only a short time before the institution of this suit that the invalidity of the tax deed as a source of title was ascertained. A desire to dispose of the property led the complainants to have an investigation made and an abstract of title obtained. It was then discovered that they could not obtain any abstract of title which purchasers would accept, in consequence of certain defects in the assessment of the taxes, under which the sale was made and the deed to Abbott was executed. They were consequently embarrassed and defeated in their efforts to dispose of the property. To remove this embarrassment this suit was accordingly brought by the complainants to obtain a judicial determination of the validity of their title and an injunction against the defendants claiming under the previous owner.

There was no substantial disagreement between the parties as to the facts, but the defendants insisted and relied solely upon the ground that a court of equity could afford no relief to the complainants, because they were not at the commencement of the suit in actual possession of the premises.

The court below, at Special Term, sustained this view, and entered a decree dismissing the bill. At General Term it affirmed that decree, and to review this last decree the case is brought here by appeal.

Decided April 11, 1892.

Mr. Justice FIELD, after stating the case, delivered the opinion of the Court:

The title of the complainants is founded upon the adverse possession of themselves and parties, through whom they derive their interests, under claim and color of title for a period exceeding the statutory time which bars an action for the recovery of land within the District of Columbia. The statute of limitation to such cases in force in the District is that of 21 James I, Ch. 16. That statute, passed for "quieting of men's estates and avoiding of suits," among other things declared that no person or persons should at any time thereafter make any entry into any lands, tenements or hereditaments but within twenty years next after his or their right or title shall thereafter have first descended or accrued to the same, and that in default thereof of such persons not entering, and their heirs, should be utterly excluded and debarred from such entry thereafter to be made, any former law or statute to the contrary notwithstanding.

Twenty years is, therefore, the period limited for entry upon any lands within this District, after the claimant's title has accrued. After the lapse of that period there is no right of entry upon lands against the party in possession, and all actions to enforce any such alleged right are barred. Complete possession, the character of which is hereafter stated, of real property in the District for that period, with a claim of ownership, operates therefore to give the occupant title to the premises. No one else, with certain exceptions—as infants, married women, lunatics, and persons imprisoned or beyond the seas, who may bring their action within ten years after the expiration of their disability—can call his title in question. He can stand on his adverse possession as fully as if he had always held the undisputed title of record.

The decisions of the courts have determined the character of the possession which will thus bar the right of the former owner to recover real property. It must be an open, visible, continuous and exclusive possession, with a claim of ownership, such as will notify parties seeking information upon the subject that the premises are not held in subordination to any title or claim of others, but adversely to all titles and all claimants. In the present cases the adverse possession of the grantors of the complainants sufficient to bar the right of previous owners, is abundantly established within the most strict definition of that term.

The objection of the defendants to the jurisdiction of a court of equity in this case arises

from confounding it with a bill of peace and an ordinary "bill *quia timet*, to neither of which class does it belong, nor is it governed by the same principles. Bills of peace are of two kinds: First, those which are brought to establish a right claimed by the plaintiff, but controverted by numerous parties having distinct interests originating in a common source. A right of fishery asserted by one party and controverted by numerous riparian proprietors on the river, is an instance given by Story where such a bill will lie. In such cases a court of equity will interfere and bring all the claimants before it in one proceeding to avoid a multiplicity of suits. A separate action at law with a single claimant would determine nothing beyond the respective rights of the parties as against each other, and such a contest with each claimant might lead to interminable litigation. To put at rest the controversy and determine the extent of the rights of the claimants of distinct interests in a common subject the bill lies, which is thus essentially one for peace. Second. Bills of peace of the other kind lie where the right of the plaintiff to real property has been unsuccessfully assailed in different actions, and is liable to further actions of the same character, and are brought to put an end to the controversy. "The equity of the plaintiff in such cases arose," as we said in *Holland v. Challen*, 110 U. S., 15, 19, "from the protracted litigation for the possession of the property which the action of ejectment at common law permitted. That action being founded upon a fictitious demise, between fictitious parties, a recovery in one action constituted no bar to another similar action or to any number of such actions. A change in the date of the alleged demise was sufficient to support a new action. Thus the party in possession, though successful in every instance, might be harassed and vexed, if not ruined, by a litigation constantly renewed. To put an end to such litigation and give repose to the successful party, courts of equity interfered and closed the controversy. To entitle the plaintiff to relief in such cases the concurrence of three particulars was essential: He must have been in possession of the property, he must have been disturbed in its possession by repeated actions at law, and he must have established his right by successive judgments in his favor. Upon these facts appearing, the court would interpose and grant a perpetual injunction to quiet the possession of the plaintiff against any further litigation from the same source. It was only in this way that adequate relief could be afforded against vexatious litigation and the irreparable mischief

which it entailed." Adams on Equity, 202; Pomeroy's Equity Jurisprudence, § 248; Stark v. Starrs, 6 Wall., 402; Curtis v. Sutter, 15 Cal., 259; Shepley v. Rangeley, 2 Ware, 242; Devonshire v. Newenham, 2 Schoales & Lef., 199. It is only where bills of peace of this kind—more commonly designated as bills to remove a cloud on title and quiet the possession to real property—are brought, that proof of the complainant's actual possession is necessary to maintain the suit. *Frost v. Spitley*, 121 U. S., 552, 556.

There is no controversy such as here stated in the present case. The title of the complainants is not controverted by the defendants, nor is it assailed by any actions for the possession of the property, and this is not a suit to put an end to any litigation of the kind. It is a suit to establish the title of the complainants as matter of record, that is, by a judicial determination of its validity, and to enjoin the assertion by the defendants of a title to the same property from the former owners, which has been lost by the adverse possession of the parties through whom the complainants claim. The title by adverse possession, of course, rests on the recollection of witnesses, and, by a judicial determination of its validity against any claim under the former owners, record evidence will be substituted in its place. Embarrassments in the use of the property by the present owners will be thus removed. Actual possession of the property by the complainants is not essential to maintain a suit to obtain in this way record evidence of their title to which they can refer in their efforts to dispose of the property.

The difference between this case and an ordinary bill *quia timet* is equally marked. A bill *quia timet* is generally brought to prevent future litigation as to property by removing existing causes of controversy as to its title. There is no controversy here as to the title of the complainants. The adverse possession of the parties through whom they claim was complete, within the most exacting judicial definition of the term. It is now well settled that by adverse possession for the period designated by the statute, not only is the remedy of the former owner gone, but his title has passed to the occupant, so that the latter can maintain ejectment for the possession against such former owner should he intrude upon the premises. In several of the States this doctrine has become a positive rule, by their statutes of limitations declaring that uninterrupted possession for the period designated to bar an action for the recovery of land shall, of itself, constitute a complete title. *Leffingwell v. Warren*, 2 Black, 599; *Campbell v. Holt*, 115 U. S. 620, 623.

"As a general doctrine," says Angell in his treatise on limitations, "it has too long been established to be now in the last degree controverted that what the law deems a perfect possession, if continued without interruption during the whole period which is prescribed by the statute for the enforcement of the right of entry, is evidence of a fee. Independently of positive or statute law, the possession supposes an acquiescence in all persons claiming an adverse interest; and upon this acquiescence is founded the presumption of the existence of some substantial reason (though perhaps not known), for which the claim of an adverse interest was borne. Not only every legal presumption, but every consideration of public policy, requires that this evidence of right should be taken to be of very strong, if not of conclusive, force."

As the complainants have the legal right to the premises in controversy, and as no parties deriving title from the former owner can contest that title with them, there does not seem to be any just reason why the relief prayed should not be granted. Such relief is among the remedies often administered by a court of equity. It is a part of its ordinary jurisdiction to perfect and complete the means by which the right, estate, or interest of parties, that is, their title, may be proved or secured, or to remove obstacles which hinder its enjoyment. Pomeroy's Equity Jurisprudence, Vol. 1, Sec. 171. The form of the remedy will vary according to the particular circumstances of each case. "It is absolutely impossible," says Pomeroy, in his treatise "to enumerate all the special kinds of relief which may be granted, or to place any bounds to the power of the courts in shaping the relief in accordance with the circumstances of particular cases. As the nature and incidents of proprietary rights and interests, and of the circumstances attending them, and of the relations arising from them, are practically unlimited, so are the kinds and forms of specific relief applicable to these circumstances and relations."

In Blight v. Banks, 8 T. B. Monroe, 192, a bill was filed by the complainant to supply the want of certain records or conveyances, under which he claimed title, said to have been executed and lost. A patent had been issued by the Commonwealth of Virginia for a large amount of property, which, by various intermediate conveyances, had become vested in the complainant. These conveyances had not been recorded, and on that ground the complainant alleged that his title was in jeopardy from creditors and innocent purchasers; that with great difficulty any title could be established at

law, because the conveyances could not be given in evidence without parol proof; and that some of the witnesses were dead, and some of the original conveyances were lost and could not be found. His prayer was that his title might be rendered complete as a recorded title by the decree of the chancellor. The first question made in the case by the defendant was as to the jurisdiction of the court. It was contended that such omissions in completing a defective title were generally the fault of the grantees, and that equity would not sustain a bill for that purpose. But the Court of Appeals of Kentucky replied that it could not doubt the propriety of the interference of the chancellor in such case. "Equity," said the court, "will frequently interfere to remove difficulties in land titles, where a party cannot proceed without difficulty at law; where the conveyances are lost, or in the possession of the opposite party, or where the parties are numerous, and the proof hard of access; and in many such cases it will lighten the burden, and settle many controversies, and bring into a small scope. And where the title is purely legal, for such and similar causes to those we have enumerated, equity has carved out a branch of jurisdiction, and a class of bills, termed in the books ejectment bills, in which not only the title is made clear, but the possession decreed also. No reason is perceived by us why the present case is not within the spirit of these cases. The difficulties in an unrecorded title, especially if it is derived through a long chain of conveyances, are familiar to our courts in this country. The danger to which the title is exposed from two classes of persons, creditors and subsequent purchasers, is often great, and the facilities afforded from a title which can be read in evidence without other proof than the authentication annexed, are felt by every one who has to bring his title into court for attack or defense, and the present case will furnish a good comment on the propriety of the interference of the chancellor." The court, therefore, decreed the relief prayed. On a petition for a rehearing it reviewed its former opinion, the main point of which was the jurisdiction of the court of equity over the bill, and said:

"It is true that bills to make legal titles which are valid against all the world, except two descriptions of persons, recorded titles, and thus to protect them from creditors and innocent purchasers, have not been frequent. But if such bills cannot be allowed under one state of conveyances, it must certainly be said that there is a defect of justice in our country. A court of

common law can give no relief in such a case, and if equity cannot do it then is the case a hopeless one. If, however, the principles which govern courts of equity are examined it will be found that there are many circumstances in this case, independent of defective conveyances, which sustain the jurisdiction." See also *Simmons Creek Coal Co. v. Doran*, 142 U. S., 417, 449.

In *Hord v. Baugh*, 7 Humphreys, 576, a bill was filed by the complainant asking the aid of a court of chancery to set up a deed of bargain and sale, which was lost or destroyed before registration, the bargainer having died without executing another. The chancellor below dismissed the bill upon the ground that the bargainer, having once conveyed the land, had parted with all his interest therein, and that the court had no jurisdiction of such a case. But the Supreme Court of Tennessee thought the chancellor erred, saying:

"The loss of the deed is a casualty seriously endangering the complainant's title, as he can maintain no action of ejectment without it. He then certainly must have a right to ask the aid of a court of chancery in his case, either by having the legal title vested in him as against the bargainer and his representatives, or by having the deed set up and established as in all other cases of lost deeds. The complainant may have his decree for either or both of these remedies."

In *Montgomery v. Kerr*, 6 Coldwell, 199, the same court sustained a bill and established the complainant's title where a deed of the property had been lost. The decree was that the complainant was entitled, by virtue of and under his deed, to hold the premises in fee simple, and that the defendant had no right, title, or interest therein.

In *Bohart v. Chamberlain*, 99 Mo., 622, the proof showed that a deed of trust which had been executed by defendant to the plaintiff had been subsequently lost without being recorded. The court on being satisfied of the correctness of the finding of the lower court to this effect, said: "No doubt is entertained that a court of equity would have jurisdiction to afford the relief prayed for in the petition. One of the most common interpositions of equity is in the case of lost deeds and instruments. A court of equity in case of the loss of an instrument which affects the title or affords a security will direct a reconveyance to be made, citing *Stokoe v. Robson*, 19 Ves., 385; 1 Story's Equity Jur., Secs. 81, 84; *Lawrence v. Lawrence*, 42 N. H., 109; 1 Mad. Ch., 24; *Fonblanche's Equity*, Ch.

1, Sec. 3." And the court added that "under the authorities cited the lower court might have directed a re-execution of the deed of trust; but, as its powers were flexible, it could accomplish the same object by a declaratory decree, establishing the existence of the deed in question. 2 Pomeroy's Eq., Sec. 827; *Garrett v. Lynch*, 45 Ala., 204; 1 Pomeroy's Eq., Secs. 171, 429."

Many other authorities to the same purport might be cited. They are only illustrative of the remedies afforded by courts of equity to remove difficulties in the way of owners of property using and enjoying it fully, when, from causes beyond their control, such use and enjoyment are obstructed. The form of relief will always be adapted to the obstacles to be removed. The flexibility of decrees of a court of equity will enable it to meet every emergency. Here the embarrassments to the complainants in the use and enjoyment of their property are obvious and insuperable except by relief through that court. No existing rights of the defendants will be impaired by granting what is prayed, and the rights of the complainants will be placed in a condition to be available. The same principle which leads a court of equity upon proper proof to establish by its decree the existence of a lost deed, and thus make it a matter of record, must justify it upon like proof to declare by its decree the validity of a title resting in the recollection of witnesses, and thus make the evidence of the title a matter of record. It is, therefore, ordered that the decree of the court below be reversed, and the cause remanded to that court with directions to enter a decree declaring the title of the complainants to the premises described in their complaint, by adverse possession of the parties through whom they claim, to be complete, and that the defendants be enjoined from asserting title to the said premises through their former owner. Each party to pay his own costs.

EDWARD J. STELLWAGEN ET AL., EXECUTORS OF THOMAS J. FISHER, DECEASED, AND JESSIE ADELAIDE SUNDERLAND, APPS.

v.

J. RANDOLPH TUCKER ET AL.

Decided April 11, 1892.

APPEAL from the Supreme Court of the District of Columbia.

The facts of this case are similar to those in No. 216, just decided, and the same principles of law control its disposition. A similar decree

of reversal with directions must be entered, the form of the decree to be adapted to the changed interest caused by the death of one of the parties pending the suit. *Ordered accordingly.*

THEATRICAL COSTUMES ARE TOOLS OF TRADE. When Miss Agnes Huntington arrived at this port on the steamship City of Paris on December 9, she brought with her seventeen packages of costumes, wigs, gloves, shoes, armor, etc., for use in the production of "Captain Therese." The collector held that they were dutiable at \$1,400, as she was not to use all the articles herself. The case came before Judge Wallace, in the United States Circuit Court on Friday last. Assistant United States Attorney C. D. Baker argued that, as Miss Huntington had brought most of these things for other persons to wear, they could not be classed as her tools of trade. Ex-Judge A. J. Dittenhoefer reasoned that they were her tools of trade, as they were to remain in her possession and were to be worn by persons employed by her. Judge Wallace has decided that the costumes were not subject to duty, and the money will be returned to her. Questions of this kind have several times arisen in recent years, and the opinion will be important to theatrical interests.—*N. Y. Law Journal.*

STOPPAGE IN TRANSITU—Loss of Right by Consignment of Bill of Lading as Collateral Security.—The assignment of a bill of lading as collateral security for the payment of a loan prevents the consignor from exercising his right of stoppage *in transitu*, until he has discharged the debt secured by such transfer. Mo. Pacific Rwy. Co. v. Heidensheimer, Supreme Court of Texas, Nov. 10, 1891, 17 S. W. Rep., 708.

Justice, sir, is the great interest of man on earth.—*Webster.*

The poorest man may in his cottage bid defiance to all the forces of the crown. It may be frail; its roof may shake; the wind may blow through it; the storms may enter, the rain may enter—but the King of England cannot enter! all his forces dare not cross the threshold of the ruined tenement.—*Pitt.*

Where law ends tyranny begins.—*Pitt.*

Here shall the Press the People's right maintain,
Unawed by influence and unbribed by gain;
Here patriot Truth her glorious precepts draw,
Pledged to Religion, Liberty, and Law.

—*Joseph Story.*

The rank is but the guinea's stamp,
The man's the gowd for a' that.—*Burns.*

New York City Court.

GENERAL TERM.

JOHN CLAFFY

v.

EDWARD S. FARROW ET AL.

DISPUTED TITLE TO NOTE—THE PROPER WAY TO PROVE TITLE.

HON. ROBERT A. VAN WYCK, P. J., JAMES M. FITZSIMONS, J., sitting.

Decided March, 1892.

APPEAL from judgment entered on verdict directed by the court against defendant Farrow.

Mr. Justice VAN WYCK delivered the opinion of the court.

This action is upon a promissory note, made by the defendant Worth to the order of defendant Farrow, who indorsed the same payable to the order of the defendant Barnegat Company, by whom it was indorsed, as well as by the defendant New York Improvement Company, and the plaintiff claimed to have subsequently acquired the same before maturity and for value. It appears that the two defendant corporations were duly served with the summons herein in March, 1891; that the Improvement Company failed to plead; that the Barnegat Company, although answering, suffered an inquest to be taken against it; and that thereupon, on April 13, 1891, a judgment was entered against them by default. The defendant Farrow, who was served October 13, was the only defendant who appeared at the trial, which was had on December 13, and which resulted in a verdict being directed by the court in favor of plaintiff for the full amount of the note and interest. Every allegation of the complaint, except as to the incorporation of the two defendant corporations, was put at issue by the answer of Farrow, which also set up an affirmative defense. At the trial plaintiff offered in evidence this judgment roll, filed April 18, in this case, against these two defendant corporations, "as to the title to this note, which comes through them. The other side denies that we are the owners of the note," and it was admitted, against the objection of counsel for Farrow, the only defendant defending, and exception was taken. This was error, for the proper way to prove title by indorsement denied is by offering the note, with proof of the genuineness of the signatures of the indorsers.

Plaintiff's counsel contends that this was a harmless error, because the note was subsequently offered in evidence and purported to

be regularly indorsed by all of these defendants, and, as he contends, was admitted without objection, although an exception appears to have been taken to its admission during a colloquy between the court and defendants' counsel had at that very moment, and at the close of which plaintiff's counsel immediately moved to dismiss, on the ground "that there was no evidence that the title to the note is in this plaintiff." It does seem that, although this exception may not be strictly regular, yet, viewed in the light of this mutual discourse between the court and counsel as appears by the record, it should be deemed available to defendant in so far as to have required proof of the genuineness of the indorsement of the Barnegat Company as appearing on the note, for, as already said, the judgment roll did not prove the genuineness of the same. The genuineness of this indorsement was material, for it must be remembered that defendant Farrow, the payee, had indorsed the note payable to the order of the Barnegat Company, which precluded the passing of title thereof by delivery alone, and required the indorsement of that company in order to permit of plaintiff acquiring title thereto.

However, there is another and further reason why this judgment should be reversed. The plaintiff neither gave nor offered any affirmative proof of the bona fides of his holding of the note, but the plaintiff, assuming that the note and the endorsements were properly proven and in evidence, simply relied upon the legal presumption raised thereby. Of course, upon the production in court of a note with indorsement properly proven, the presumption of law is raised, not only that the plaintiff is the holder of it, but that he was the holder thereof before maturity and for full value, but this presumption is overcome by proof on behalf of a defendant that the note has been diverted from the purpose for which it was delivered, or that it was obtained from the defendant by fraud or theft. A witness for defendant Farrow was allowed to testify, without objection from plaintiff, as follows: "I am the partner of Mr. Farrow in the banking business. I remember his giving this note to me. It was some time in September, 1890. I had it with a number of others in my desk at No. 40 Wall street, New York. I never parted with possession of it. It was stolen from my possession. I never parted with title to it. After the note was stolen from my desk the next I heard of it was this gentleman, who introduced himself as Mr. Claffy (the plaintiff), came to our office, No. 40 Wall street, and asked

me about the note, and I served notice upon him that the note was stolen from me, that the parties that indorsed it never received any value for it whatever, and he was not entitled to it. That was after he purchased the note, but before maturity." The defendant had testified that the last he saw of the note was when he handed it to his partner, and he was asked by his counsel this question: "Did it ever pass out of your personal possession later?" "Objected to. Objection sustained. Exception."

This evidence on behalf of defendant certainly put the plaintiff to affirmative proof of the bona fides of his holding. The rule as to the shifting of the burden of proof under such circumstances is aptly stated by Judge Rapallo in *First National Bank v. Green*, 43 N. Y., 300, as follows: "A plaintiff, suing upon a negotiable note or bill, purchased before maturity, is presumed, in the first instance, to be a bona fide holder. But when the maker has shown that the note was obtained from him under duress, or that he was defrauded of it, the plaintiff will then be required to show under what circumstances and for what value he became the holder. The reason for this rule, given in the later English cases, is that where there is a fraud, the presumption is that he who is guilty will part with the note for the purpose of enabling some third party to recover upon it, and such presumption operates against the holder, and it devolves upon him to show that he gave value for it." This rule applies with equal force in favor of a payee who indorses the note payable to the order of a particular person, as did the defendant in this action, and therefore the plaintiff could not simply rely the presumption arising from the production of the note but was called upon "to show under what circumstances and for what value he became the holder," which, however, he failed to do, and hence it was error to direct a verdict in his favor.

The judgment is reversed and a new trial granted, with costs to appellant to abide the event.

Fitzsimons, J., concurs.

—*New York Law Journal.*

AN M. D. once reproached a learned counsel with what Mr. Bentham would call the "uncognoscibility" of the technical terms of the law. "Now, for example," said he, "I never could comprehend what you meant by docking an entail." "My dear doctor," replied the barrister, "I do not wonder at that, but I will soon explain the meaning of the phrase; it is doing what your profession never consent to—suffering a recovery."—*Law Notes.*

Supreme Court of the United States.

ROGER M. SHERMAN, PLAINTIFF IN ERROR,
v.

IRVING GRINNELL AND GEORGE S. BOWDOIN, EXECUTORS OF MOSES H. GRINNELL, DECEASED.

1. There was no Federal question involved in the decision of the City Court that the defendant was estopped from showing that the moneys in question were paid out of the United States Treasury under a mistake of fact; that the Secretary had vacated the award; or that no valid agency existed by force of the Statutes of the United States to collect and pay over the moneys.
2. The court did not pass upon the validity of any statute of or authority exercised under the United States, nor decide against any title, right, privilege, or immunity specially set up or claimed by the defendant for himself under any statute or commission held, or authority exercised under the United States.

Decided April 4, 1892.

IN ERROR to the City Court of New York.

This was an action brought by the executors of the estate of Moses H. Grinnell, deceased, formerly collector of the port of New York, in the City Court of New York, against Roger M. Sherman, to recover the sum of \$1,778.95, collected from the United States for plaintiffs' testator by defendant as his attorney.

An award by the Secretary of the Treasury in favor of Mr. Grinnell for the sum in question, made May 2, 1885, was offered in evidence on the trial, to which the defendant objected on the ground that the jurisdiction of the Secretary of the Treasury to make the award has not been shown, and that it appeared affirmatively on the face of the award that the Secretary had no power to make it. This objection was overruled and exception taken. Plaintiffs also put in evidence a copy certified under the seal of the collector of customs for the port of New York, of a paper, whereby Roger M. Sherman received by the collector for the sum in question as attorney for the executors of Mr. Grinnell. Defendant objected to the admission of this receipt in evidence on the ground that the certification was insufficient, and also that the receipt purported to be part of the proceedings in the Treasury matter, in respect of which no proof had been offered of the jurisdiction of the Secretary. The objection was overruled and exception taken.

The court made findings of fact and conclusions of law, and among other things, found that the defendant as attorney for the executors received the sum of \$1,778.95 from the Treasurer

of the United States on or about May 9, 1885. On June 1, 1885, the executors made demand upon Sherman for the money, which he refused to pay over, alleging that since the award the matter had been reopened by the Secretary and was still in debate, and evidence was offered on his behalf tending to show this, and that the matter of the award had been sent to the Court of Claims.

The City Court held that the defendant was estopped from denying his clients' title after having collected the money for him, and gave judgment for the amount claimed, with interest, costs, etc., whereupon the defendant took the case by appeal to the General Term of the court, by which the judgment was affirmed.

It was said in the opinion of the General Term, delivered by Hall, J.: "Defendant seeks to justify his refusal to pay over by the claim that since the money was paid over to him the matters out of which it arose or accrued have been re-opened by the government and referred to the Court of Claims, and he fears that in case the award should be revoked he may be compelled to repay the money to the government. Defendant's relations with plaintiffs were simply as attorney at law, and, in fact, the money was paid by the government to them, not to him; he was a mere conduit through which it passed; his receipt was their act, not his own; his acts were their acts and binding upon them; the money was theirs, not his, and he should have paid it over immediately upon its receipt. Any claim which the government may have, now or hereafter, will be against plaintiffs, not against defendant. The plaintiffs are estopped from claiming in any future proceeding that they have not received the money, as it has been paid to the person authorized by them to receive it. It does not lie with defendant to assert that the money was wrongfully paid over; he made and maintained the claim, and the money was recovered as the result of his efforts. I have carefully examined the elaborate and ingenious brief of defendant and the numerous authorities cited, but I fail to discover their applicability to the facts of this case. No new title, adverse or superior to plaintiffs', is asserted in this case. No demand has been made upon defendant to deliver the money over or to withhold it from the plaintiffs, and no step contemplating or looking towards a disturbance of plaintiffs' title was taken until long after the money was demanded and should have been paid over. It would seem almost preposterous to assert that plaintiffs are bound to allow their money to lie in the hands of their attorney until

the initiation and conclusion of some imaginary proceeding in behalf of the government. The defendant stands in no different position from any other custodian of plaintiffs' money; it has been paid legally to them and they have the right to control it. Defendant seems to be much more tender of the interests of the United States than its officers are. No claim has been made upon him by the Government; no notice has been given to him not to pay over to his clients, and yet he seeks to hold the money for an indefinite time until some one does make a demand upon him, but his first duty is to his clients."

Defendant thereupon carried the case by appeal to the general term of the Court of Common Pleas for the city and county of New York, and the judgment was again affirmed. The record having been remitted to the City Court, the judgment of affirmance was made the judgment of that court, and a writ of error was then sued out from this court.

Errors were assigned here to the effect as stated in the brief of plaintiff in error that he specially claimed immunity from this suit, because the subject of the suit was money of the United States improperly paid from the Treasury by mistake and contrary to law, in which these plaintiffs have no right, title or interest; because the Secretary of the Treasury had, before suit commenced, set aside and vacated his award of said money; because defendant is a trustee for the United States in respect to said money; and because no valid agency existed or could exist by force of the statutes of the United States, to collect, receive or pay over said money, under the circumstances; and that said claim was improperly overruled. Also that he was improperly held to be estopped from asserting these matters; and that the receipt certified by the collector, was improperly received in evidence, because the certification was not by the head or acting chief officer for the time being of a Department of the Government of the United States. The admission of the award in evidence was also questioned.

Mr. CHIEF JUSTICE FULLER delivered the opinion of the Court:

There was no Federal question involved in the decision of the City Court that the defendant was estopped from showing that the moneys in question were paid out of the United States Treasury under a mistake of fact; that the Secretary had vacated the award; or that no valid agency existed by force of the statutes of the United States to collect and pay over these moneys.

The court did not pass upon the validity of any statute of or authority exercised under the United States, nor decide against any title, right, privilege, or immunity specially set up or claimed by the defendant for himself under any statute of, or commission held, or authority exercised under, the United States. What he undertook to set up was a claim to the funds made by the United States; and in respect to that his contention was that the question of the award had been opened, and that the matter had been referred to the Court of Claims.

The court simply decided that he could not deny his client's title after having collected the money for him, and he assigned as error that the court held that he was so estopped. The ground upon which the judgment rested was broad enough to sustain it without deciding any Federal question, if there were any in the case. As to the admission of the award and of the receipt in evidence, the rulings involved the application either of the general or the local law of evidence, and as such furnish no ground for our interposition. *New Orleans v. New Orleans Water Works Co.*, 142 U. S. 79; *Hammond v. Johnston*, Id., 73.

The writ of error is dismissed.

A JUDGE, in pronouncing the death sentence, tenderly observed: "If guilty, you deserve the fate that awaits you; if innocent, it will be a gratification for you to feel that you were hanged without such crime on your conscience; in either case you will be delivered from a world of care."

Legal Notices.

Rule of Court.

RULE 20. * * * * Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

FIRST INSERTION.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of MICHAEL BELCHER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 11th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 11th day of April, 1892.

THOMAS G. ADDISON,
Care of Waters & Taylor, Attorneys,
15 Waters & Taylor, Proctors. Fendall Bldg.

Legal Notices**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

Lydia J. Shaw v.
John H. Shaw.

This cause coming on to be heard on motion of complainant and it appearing to the court that the summons issued in said cause has been returned not to be found and it further appearing to the court from the affidavit filed herein, that the defendant is a non-resident; it is therefore this 6th day of April, A. D. 1892, ordered that the defendant cause his appearance to be entered herein on or before the first rule-day, occurring forty days after publication hereof, providing a copy of this order be published once a week for three successive weeks in the Washington Law Reporter.

The object of this suit is to secure an absolute divorce from the defendant on the ground of desertion.

A. B. HAGNER, Asso. Justice.

A true copy. Test: J. R. Young, Clerk.
15. By M. A. Clancy, Asst. Clerk.
[Filed April 6, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Edward Hook v.
Martin V. B. Bogan et al.

It is ordered this 6th day of April, A. D. 1892, that the defendant, ORAN B. CILLEY, enter his appearance herein on or before the first rule-day occurring forty days after this day; otherwise this cause will be proceeded with as in case of default.

Provided a copy of this order be published in the Washington Law Reporter for the space of three weeks by successive weekly insertions in said paper.

The object of this suit is to correct an error in the deed recorded in Liber No. 775, folio 241, of the land records of the District of Columbia.

A. B. HAGNER.

A true copy. Test: J. R. Young, Clerk.
By M. A. Clancy, Asst. Clerk.
[Filed April 6, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

The eighth day of April, 1892.

Theodore E. Spencer v.
Estella F. Spencer.

On motion of the plaintiff, by Mr. Joseph J. McNally, his solicitor, it is ordered that the defendant, ESTELLA F. SPENCER, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce *a vinculo matrimonii* on the ground of willful desertion and abandonment for the full and uninterrupted period of two years and more before the filing of complainant's bill.

And further that complainant have the custody of the infant children.

This notice to be published in the Washington Law Reporter.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
15. By M. A. Clancy, Asst. Clerk.
[Filed April 8, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

The eighth day of April, 1892.

William E. Hodge v.
Robert Mason et al.

On motion of the complainant by Thomas M. Fields, his solicitor, it is ordered that the respondent, MARTHA W. BARRITZ, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to enforce payment of judgment at law No. 32,205, by sale of the interest of Robert Mason in lot numbered two hundred and forty-three (243) in T. F. Schneider's subdivision in square numbered three hundred and sixty-two (362) in the city of Washington in the District of Columbia.

Provided a copy of this order be published once a week for each of the three successive weeks next before said rule-day in the Washington Law Reporter and the Evening Star.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
15. By M. A. Clancy, Asst. Clerk.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA:**

Holding a Special Term for Orphans' Court Business.

April 8th, 1892.

In the matter of the Estate of ROBERT McMURDY, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by Robert H. McMurdy and Helen B. McMurdy.

All persons interested are hereby notified to appear in this court on Friday the 20th day of May next, at one o'clock P. M., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
15. No. 4922. Ad. Doc. 17. Chas. W. Needham,
Proctor for Petitioners.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

Holding a Special Term for Orphans' Court Business.

April 8th, 1892.

In the case of Edward A. Newman, Executor of ANN JANE NEWMAN, deceased, the Executor aforesaid with the approval of the Court, appointed Friday, the 6th day of May, A. D. 1892, at one o'clock p. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
15. No. 4300. Ad. Doc. 16.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

Holding a Special Term for Orphans' Court Business.

April 8th, 1892.

In the matter of the Estate of CHARLES D. DRAKE, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased, has this day been made by Anna P. Westcott, named in the will of said deceased as Executrix.

All persons interested are hereby notified to appear in this court on the 6th day of May next, at eleven o'clock p. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
15. No. 4921. Ad. Doc. 17. Wm. B. King, Proctor, 918 F St.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

Holding a Special Term for Orphans' Court Business.

April 8th, 1892.

In the matter of the estate of JOHN M. WILL, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased, has this day been made by Marie A. Hermansdoerfer.

All persons interested are hereby notified to appear in this court on Friday, the 6th day of May next, at one o'clock p. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER and Washington Post previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
15. Ad. Doc. 17. S. J. Block, Proctor.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

Carrie L. Helke,
 v.
Oswald Helke.} In Equity. No. 13,739.

This cause coming on to be heard on motion of Samuel D. Truitt, counsel for complainant, and it appearing to the court that the summons issued in said cause has been returned not to be found, and it further appearing to the court from the affidavit filed herein, that the defendant is a non-resident, it is therefore, this 7th day of April, A. D. 1892, ordered, that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after publication hereof, providing a copy of this order be published once a week for three successive weeks in the Washington Law Reporter.

The object of this suit is to secure an absolute divorce from the defendant on the grounds of adultery and desertion.

A. B. HAGNER, Asst. Justice.

A true copy. Test: J. R. Young, Clerk.
 15 By M. A. Clancy, Asst. Clerk.
 [Filed April 7, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Frank Libbey et al.
 v.
Benjamin Frank et al.} Equity. No. 13,714.

It appearing to the court that the subpoena issued against the defendant, BENJAMIN FRANK, has been returned not to be found, it is, this 6th day of April, A. D. 1892, ordered that said defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise this cause will be proceeded with as in case of default.

Provided a copy of this order be published in the Washington Law Reporter for the space of three weeks by successive weekly insertions in said paper.

The object of this suit is to enforce the mechanics' liens set out in the bill upon part of lot 5, in square 428, in the city of Washington, D. C.

A. B. HAGNER.
 A true copy. Test: J. R. Young, Clerk,
 15 By M. A. Clancy, Asst. Clerk.
 [Filed April 6, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

William Colbert et al.
 v.
Annie Burke et al.} Equity. No. 13,769.

It is ordered, this 6th day of April, A. D. 1892, that the defendants, JOHN RAEDY, TEENIE B. RAEDY, MICHAEL RAEDY and ANNIE M. RAEDY, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise this cause will be proceeded with as in case of default.

Provided a copy of this order be published in the Washington Law Reporter for the space of three weeks, by successive weekly insertions in said paper, before said day.

The object of this suit is to obtain a sale for the purpose of partition of sublot 22, in square 890, Washington, D. C.

A. B. HAGNER.
 A true copy. Test: J. R. Young, Clerk.
 15 By M. A. Clancy, Asst. Clerk.
 [Filed April 6, 1891. J. R. Young, Clerk.]

SECOND INSERTION.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**
 Holding a Special Term for Orphans' Court Business.

April 1st, 1892.

In the matter of the Estate of THOMAS A. MITCHELL, late of Washington, D. C., deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration c. t. a. on the Estate of the said deceased, has this day been made by Edwin B. Hay.

All persons interested are hereby notified to appear in this Court on Friday, the 29th day of April next, at one o'clock p. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration c. t. a. on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Washington Post previous to the said day.

By the Court. A. B. HAGNER, Justice.
 Test: L. P. WRIGHT,
 Register of Wills for the District of Columbia.

14 No. 4907. Ad. Doc. 17.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of LOUIS W. SINSABAUGH, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 29th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of March, 1892.

SARAH S. SINSABAUGH,
 14 John Ridout, Proctor. 1747 Q St., n. w.

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters of Administration on the personal estate of CELIA HOFFA, late of the District of Columbia, deceased.

All persons having claims against the said deceased, are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 31st day of March, 1892.

FRANK HOFFA,
 14 Leon Tobriner, Proctor. 409 7th St., n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
 Holding a Special Term for Orphans' Court Business.

April 2, 1892.

In the case of John M. Langston, Administrator of SARA K. FIDLER, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 3rd day of April, A. D. 1892, at one o'clock p. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter, previous to the said day.

Test: L. P. WRIGHT, Register of Wills for the District of Columbia.
 14 No. 2727. Ad. Doc. 18.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
 Holding a Special Term for Orphans' Court Business.

April 1, 1892.

In the matter of the Estate of JAMES ANDERSON late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Charles Wells.

All persons interested are hereby notified to appear in this Court on Friday, the 29th day of April next, at one o'clock, p. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
 Test: L. P. WRIGHT, Register of Wills for the District of Columbia.
 14 Frank T. Browning, Proctor.

This is to Give Notice

That the subscriber, of Westborough, Mass., has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters of Administration on the personal estate of WILLIAM F. HOLTON, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day of April, 1892.

RUSSELL F. HOLTON,
 Care of H. M. Baker, 1411 F St., n. w.
 14 Henry M. Baker, Proctor.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of WILLIAM COPPINGER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of March, 1892.

MARTHA A. M. COPPINGER,
14 Reginald Fendall, Proctor. 226 E St., n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 1st day of April, 1892.

Petition of Thomas A. Ryan for } No. 18,739. Eq. Doc. 33.
leave to change his name.

On motion of the petitioner, by Mr. E. M. Hewlett, his solicitor, it is ordered that notice of the filing of this petition be printed in the Washington Law Reporter and in The Evening Star, once a week for each of three consecutive weeks, before the 1st day of May, 1892.

The object of this petition is for leave to the petitioner to change his name from Thomas A. Ryan to Frank A. Carter.

By the Court. A. B. HAGNER, Justice.

True copy. Test: J. R. Young, Clerk.
14 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 30th day of March, 1892.

Katie F. Christine } v. No. 18,280. Eq. Docket 82.
Albert B. Christine.

On motion of the plaintiff, by Mr. A. B. Williams, her solicitor, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a decree of divorce from the bond of marriage with the defendant on the ground of desertion.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
14 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

Holding a Special Term for Orphans' Court Business.

In the matter of the Estate of HARVEY B. BESTOR, late of the District of Columbia, deceased.

Application for the probate of the last Will and Testament of the said deceased, bearing date December 25, 1891, filed with the Register of Wills for this District and now exhibited to the Court, has been made by Henrietta M. Fowler, a sister of said deceased, and the executrix named in his Will.

All persons are this 1st day of April, 1892, hereby notified to appear in this court on Friday, the 24th day of the present month of April, at 1 o'clock p. m., to show cause why the said Will should not be admitted to probate and record.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day, or personal notice be served upon the absent heir before said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT.
Register of Wills for the District of Columbia.
14 No. 4795. Ad. Doc. 17. Edwards & Barnard, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Sitting as an Orphans' Court.

In the matter of the application of Charles N. Pomeroy for the removal of Willis H. Reynolds as Administrator of the estate of CHARLES POMEROY, deceased.

Upon consideration of the petition of Charles N. Pomeroy, for the removal of Willis H. Reynolds as administrator of the estate of Charles Pomeroy, deceased, it is this 1st day of April, 1892, ordered, that the said Willis H. Reynolds, Administrator as aforesaid, show cause on or before the 6th day of May next, why he should not be removed as such administrator for failure to file an inventory as required by law.

Provided that a copy of this order be published once a week for three weeks in the Washington Law Reporter and the Washington Post before said day.

A True Copy. Test: A. B. HAGNER.
14 L. P. WRIGHT,
Register of Wills, D. C.

Legal Notices**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of JAMES H. WHITE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 25th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of March, 1892.

A. E. L. KEESE,
14 No. 416 5th St., Columbia Law Building.

This is to Give Notice

That the subscriber of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters of Administration c. t. a. n. on the personal estate of BENJAMIN COOLEY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 1st day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under their hands this 1st day of April, 1892.

THE WASHINGTON LOAN & TRUST CO.

14 John B. Larner, Proctor. By W. B. Robison, Sec'y.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

March 30th, 1892.

In the case of Benjamin P. Snyder, Executor of WILLIAM N. WATERS, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 29th day of April, A. D. 1892, at one o'clock p. m. for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star previous to the said day.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
14 R. Ross Perry, Proctor. No. 3932. Ad. Doc. 15.

This is to Give Notice

That the subscriber, of Philadelphia, Penna., has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of HENRY SHARPLESS, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 4th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of April, 1892.

PHEBE E. SHARPLESS,
14 Gordon & Gordon, Proctors. 1528 T St., n. w.

This is to Give Notice

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters Testamentary on the personal estate of MARTIN L. HIGGINS, late of the District of Columbia deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscribers, on or before the 4th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 4th day of April, 1892.

NATHANIEL FREEMAN,
SAMUEL WALLACE,
114 D St., n. w., City.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

The 5th day of April, 1892.

James H. Williams } No. 13,715. Eq. Docket 33.
Minnie E. Williams. v.

On motion of the plaintiff, by Mr. Campbell Carrington, his solicitor, it is ordered that the defendant, MINNIE E. WILLIAMS, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for an absolute divorce upon the ground of wilful desertion and abandonment by the party complained of against the party complaining for the full uninterrupted space of two years before the beginning of this suit.

By the Court. A. B. HAGNER, Justice, &c.
 True copy. Test: J. R. Young, Clerk, &c.
 13 By M. A. Clancy, Asst. Clerk.

THIRD INSERTION.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of MARY JANE ROSS, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of March, 1892.
 13 J. H. Adriaans, Proctor. IRVING GIBSON,
 710 16th St., n. w.

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters Testamentary on the personal estate of CAROLINE C. ACKER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of March, 1892.
 13 WALTER H. ACKER,
 1008 F St., n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
 Holding a Special Term for Orphans' Court Business.

March 25th, 1892.

In the case of James L. McLane, Executor of JOSEPH E. JOHNSTON, deceased, the Executor aforesaid has, with the approval of the court, appointed Friday, the 29th day of April, A. D. 1892, at one o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star previous to the said day.

Test: L. P. WRIGHT,
 Register of Wills for the District of Columbia.
 13 No. 4346. Ad. Doc. 16. Gordon & Gordon, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
 The 28th day of March, 1892.

Robert Briscoe } No. 13,668. Eq. Docket 33.
Lavinia Briscoe. v.

On motion of the plaintiff, by Mr. Campbell Carrington, his solicitor, it is ordered that the defendant, LAVINIA BRISCOE, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for an absolute divorce upon the ground of wilful and uninterrupted desertion for over two years from the filing of the petition in this cause.

By the Court. A. B. HAGNER, Justice, &c.
 True copy. Test: J. R. Young, Clerk, &c.
 13 By M. A. Clancy, Asst. Clerk.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

The 25th day of March, 1892.

Emma C. Goodman } No. 13,872. Eq. Docket 32.
Charles B. Goodman. v.

On motion of the plaintiff, by Mr. A. B. Williams, her solicitor, it is ordered that the defendant, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a decree of divorce from the bond of marriage with defendant on the ground of desertion.

By the Court. A. B. HAGNER, Justice, &c.
 True copy. Test: J. R. Young, Clerk, &c.
 13 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 24th day of March, 1892.

Albert F. Fox, Administrator of the Estate of Emmett Kennedy, vs. Thomas Pitchlynn. No. 13,581. Eq. Doc. 33.

On motion of the plaintiff, by Messrs. Edwards & Barnard, his solicitors, it is ordered that the defendants, ALICE BEVIL, EMMA GREEN, MOLLY FOLSOM, MINNIE SEMPLE, RHODA MORRIS, and DAVID FOLSOM, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to make distribution to the parties entitled, of the personal estate of the late Emmett Kennedy, deceased, now in the hands of the complainant.

By the Court. A. B. HAGNER, Justice, &c.
 True copy. Test: J. R. Young, Clerk, &c.
 13 By M. A. Clancy, Asst. Clerk.

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business Letters of Administration on the personal estate of JANE E. GILES, otherwise called JENNIE E. GILES, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of February, 1892.
 13 Geo. L. Clark, Proctor. FENELON B. BROCK,
 26 Atlantic Bldg.

This is to Give Notice

That the subscriber of Washington City, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, letters Testamentary on the personal estate of ANN JOYCE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of March next; they may otherwise by law be excluded from all benefit of the said deceased.

Given under my hand this 19th day of March, 1892.
 13 No. 4801. Ad. Doc. 17. JOSE IGNACIO RODRIGUEZ,
 2 Lafayette Square.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of ELIZABETH SMEDLEY BERRY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 26th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of March, 1892.
 13 Randall Hagner, Proctor. JAMES J. CAMPBELL,
 926 New York Ave., n. w.

The Washington Law Reporter.

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WASHINGTON, D. C., - - - APRIL 21, 1892

Book Review.

"THE BIRTH OF THE REPUBLIC. Compiled from the National and Colonial Histories and Historical Collections, from the American Archives and from Memoirs, and from the Journals and Proceedings of the British Parliament, by DANIEL R. GOODLOE. Containing the Resolutions, Declarations, and Addresses adopted by the Continental Congress, the Provincial Congresses, Conventions and Assemblies, of the County and Town Meetings, and the Committees of Safety in all the Colonies, from the Year 1765 to 1776. To which is added the Articles of Confederation, a History of the Formation and Adoption of the Constitution, the Election of President Washington, his Inauguration April 30, 1789, a Copy of the Constitution, and Washington's Inaugural Speech." Chicago, New York and San Francisco: Belford, Clark & Company, Publishers.

This work has been prepared by Col. Goodloe with great industry and fidelity, and it is a rare collection of important historical documents, gathered in one handy volume of 400 pages. It ought to be in every library, public and private, in all the United States.

Shall I, like a hermit dwell
On a rock or in a cell? —Raleigh.

They are never alone that are accompanied
with noble thoughts. —Sidney.

I'm armed with more than complete steel—
The justice of my quarrel. —Marlowe.

No man e'er felt the halter draw,
With good opinion of the law.—John Trumbull.

Some wee short hour ayont the twal.—Burns.
Seven wealthy towns contend for Homer
dead,

Through which the living Homer begged his
bread. —Anon.

The Sherman Case.

WASHINGTON, D. C., April 20, 1892.

To the Editor of the Washington Law Reporter:

DEAR SIR: Under the caption of "Professional Propriety" there is a letter over the signature of "M. Ashford, Prest. Title Co.," in your number of April 7, which seems to demand some notice from us.

So far as this letter is an attack upon the Supreme Court of the District of Columbia, or upon its judges, we have no comment to make upon it. That court is amply competent to take care of itself in the matter, and we are not called upon to be its advocates or defenders. But when Mr. "M. Ashford, Prest. Title Co.," indulges in a personal attack upon the undersigned, the undersigned propose to take care of themselves.

Mr. Ashford states that in the case of Sherman v. Sherman counsel reflected upon "the title company." We were under the impression that there were several title companies in the city of Washington, but Mr. Ashford seems to think that the company of which he is president is the only one.

In the brief of counsel in the case referred to there was no title company specified, nor was there any intimation whatever from which any one could infer which of the title companies was intended. Moreover, the statement was simply a statement of facts—that the title company (whichever company it was) had overruled the decision of the Supreme Court of the District of Columbia, and there was nothing whatever in the statement reflecting upon the company or impugning its motives. But Mr. Ashford thinks that his motives have been impugned and his conduct criticised. This certainly was not done in the brief to which he refers, and we fail to find any such impugnment or criticism in the decision of the court. We, knowing, of course, that Mr. Ashford, or his company, was the title company referred to in the brief, believed that he or it was at least honest in the position assumed; but Mr. Ashford's manifestations of extreme sensitiveness may compel us to revise our judgment.

Mr. Ashford states that "counsel, though representing the bill of review, took the other side of the argument." This statement is unfounded in fact and false in insinuation, and Mr. Ashford had ample opportunities of knowing this, when he made it.

Mr. Ashford also says: "It is believed that if the learned counsel in the Sherman case had represented the vendor [in the Inglehart case to

which he refers] we should have had a foretaste of the spleen they worked off in the brief referred to." The only spleen is Mr. Ashford's own, and the mere result of chagrin from frequent defeat. We have had occasion more than once to oppose Mr. Ashford's conclusions; and our opposition has not been without success. Mr. Ashford may differ from and even refuse to submit to the decisions of the court, but no man must dare differ with the conclusions of Mr. Ashford.

Mr. Ashford's attack upon counsel in the Sherman case is altogether unwarranted. If he felt aggrieved by the brief to which he refers, and had called upon counsel for an explanation, that explanation would have been cheerfully accorded. He has preferred to rush into print, and fearing that his weak statements and misstatements might fail of their purpose, he adopts the unusual course of publishing his letter under the caption, or headline, of "Professional Propriety."

It would, perhaps, be charitable to suppose that Mr. Ashford's long retirement from the usual contact and requirements of professional life, caused by his absorption of The Title Insurance Company, or The Title Insurance Company's absorption of Mr. Ashford, has dulled his appreciation of the elements of professional propriety.

M. F. MORRIS,
G. E. HAMILTON.

CONFlict OF LAWS—Perpetuities.—A testamentary disposition of personal property, lawful and valid at the place of the testator's domicile, where it was made, is enforceable in New York, although if made in New York it would have been invalid as a violation of the statute against perpetuities. N. Y. Ct. of App., March 1, 1892. *Cross v. United States Trust Co. of New York.* 16 N. Y. Supp., 137, affirmed.

FORM OF QUESTION.—Attorney: "Now, mark me well, sir. Do I understand you to say that you were standing within 10 feet of the parties when the fight began?" Witness to the court: "Your Honor, have I got to answer that question?" The court: "I see nothing wrong in the question. You may answer it." Witness, to Attorney: "Well, sir, I don't know whether you understand me to say it or not."

JUDGE (to prospective juryman): "What is your occupation?"

P. J. "Collector for the gas company."

Judge: "You are excused. It would be impossible for you to bring in a true bill."—*Irish Law Times.*

Supreme Court of the United States.

JOHN O'NEIL, PLAINTIFF IN ERROR.

v.

THE STATE OF VERMONT.

1. John O'Neill's place of business was at Whitehall, in the State of New York; and he sent intoxicating liquors in separate packages to parties in Rutland, Vt., by express, C. O. D. He was convicted in the county court of Rutland County, of 307 offenses of selling such liquors at Rutland, without authority and contrary to the laws of Vermont, as of a second conviction for a like offense, and was adjudged to pay fines and costs amounting to \$6,338.72, and to be imprisoned, etc.
2. O'Neill carried the judgments to the Supreme Court of Vermont, on error, and there the judgments were affirmed.
3. He then sued out a writ of error from this court to review the judgment of the Supreme Court of Vermont; but the court holds that the record does not present a Federal question, and therefore the writ of error is dismissed for want of jurisdiction in this court.

Decided April 4, 1892.

IN ERROR to the Supreme Court of the State of Vermont.

Mr. Justice BLATCHFORD delivered the opinion of the Court:

On the 26th of December, 1882, a grand juror, of the town of Rutland, in the county of Rutland and State of Vermont, made a written complaint, on his oath of office, before a justice of peace of that county, that John O'Neill, of Whitehall, New York, on December 25th, 1882, at Rutland, at divers times, did "sell, furnish, and give away intoxicating liquor, without authority," and contrary to the statute, and further, that O'Neill, at the March term, 1879, of the Rutland County Court, had been convicted of selling, furnishing, and giving away intoxicating liquors, against the law. Thereupon the justice issued a warrant for the arrest of O'Neill. He was arrested and brought before the justice, and pleaded not guilty.

The statute of Vermont under which the prosecution was instituted is embodied in Seca. 3800 and 3802 of chapter 169 of the Revised Laws of Vermont of 1880, (pages 734, 735,) in these words:

"Section 3800. No person shall, except as otherwise especially provided; manufacture, sell, furnish or give away, by himself, clerk, servant or agent, spirituous or intoxicating liquor, or mixed liquor of which a part is spirituous or intoxicating, or malt liquors or lager beer; and the phrase 'intoxicating liquors' where it occurs in this chapter shall be held to include such liquors and beer.

"The word 'furnish,' where it occurs in this chapter, shall apply to cases where a person

knowingly brings into or transports within the State for another person intoxicating liquor intended to be sold or disposed of contrary to law, or to be divided among or distributed to others.

"The words 'give away,' where they occur in this chapter, shall not apply to the giving of intoxicating liquor at private dwellings, or their dependencies, unless given to an habitual drunkard, or unless such dwelling or its dependencies become a place of public resort.

"But no person shall furnish or give away intoxicating liquor at an assemblage of persons gathered to erect a building or frame of a building, or to remove a building or at a public gathering for amusement.

"Nothing in this chapter shall prevent the manufacture, sale and use of wine for the commemoration of the Lord's supper, nor the manufacture, sale and use of cider, or, for medical purposes only, of wine made in the State from grapes or other fruits, the growth of the State and which is without the admixture of alcohol or spirituous liquor, nor the manufacture by any one for his own use of fermented liquor.

"But no person shall sell or furnish cider or fermented liquor at or in a victualing house, tavern, grocery, shop, cellar or other place of public resort, or at any place to an habitual drunkard."

"Sec. 3802. If a person by himself, clerk, servant or agent, sells, furnishes or gives away; or owns, keeps or possesses with intent to sell, furnish or give away, intoxicating liquor or cider in violation of law, he shall forfeit for each offense to the State, upon the first conviction ten dollars and costs of prosecution; on the second conviction he shall forfeit for each offense twenty dollars and costs of prosecution, and shall also be imprisoned one month; and on the third and subsequent convictions he shall forfeit for each offense twenty dollars and the costs of prosecution, and shall also be imprisoned not less than three months nor more than six months."

The complaint was in the form prescribed by section 385^a of the Revised Laws of Vermont, for offenses against section 3802; and section 386^b provides that under such form of complaint "every distinct act of selling" may be proved, "and the court shall impose a fine for each offense."

The justice, after hearing the proofs of the parties, entered judgment finding O'Neil guilty of 457 offenses, second conviction, of selling intoxicating liquors in violation of chapter 169 of the Revised Laws, and adjudging that he pay to the treasurer of the State a fine of \$9,140, and

the costs of prosecution, taxed at \$472.96, and be confined at hard labor in the house of correction at Rutland for the term of one month, and that, in case such fine and costs should not be paid on or before the expiration of said term of one month's imprisonment, he should be confined at hard labor in the house of correction at Rutland for the further term of 28,836 days, to be computed from the expiration of said term of one month's imprisonment. From that judgment O'Neil appealed to the county court of Rutland County. The appeal was allowed, and he gave bail for his appearance.

In the county court O'Neil pleaded not guilty, and the case was tried by a jury. He did not take the point, either before the justice of the peace or the county court, that there was any defect or want of fulness in the complaint. Any such point was waived by the failure to take it. Besides, it did not involve any Federal question. The question of the consolidation of several offenses in one complaint is purely a matter of State practice, and it is a familiar rule of criminal law, that time need not be proved as alleged.

The jury found O'Neil guilty of 307 offenses "of selling intoxicating liquor without authority and contrary to the laws of Vermont, as of a second conviction for a like offense." He filed exceptions, which state that, for the purpose of the trial, he admitted the following facts: "The respondent, John O'Neil, of Whitehall, in the county of Washington and State of New York, is a wholesale and retail dealer in wines and liquors at said Whitehall, and has been so engaged in business there for more than three years last past, and that said business by him carried on is a lawful and legitimate business under the laws of the State of New York as conducted by him there. That during the last three years the respondent has received at his store, in said Whitehall, three hundred and seven separate and distinct orders by mail, telegraph, and express, for specified and designated small quantities of intoxicating liquors, from as many different parties residing in Rutland, in the State of Vermont. The orders so sent by express were in the form of a letter addressed to the said John O'Neil at Whitehall aforesaid, and the letter attached to a jug, and the jug, with the letter attached, was delivered by said parties to the National Express Company, in Rutland, and charges thereon paid by the parties so sending the order. Orders sent by mail were by letters or postal cards deposited in the post offices at said Rutland, directed to John O'Neil at Whitehall, New York, and postage paid thereon.

Orders sent by telegraph were delivered by the sender at the telegraph offices in said Rutland, directed to said John O'Neil, Whitehall, New York, and charges paid by the sender, which orders requested the respondent to send said intoxicating liquors to the parties ordering the same at said Rutland, and in more than one-half the number of instances said orders directed him to send said liquors by express, C. O. D., and in the other instances, where the orders did not specify, it was the intention of the purchaser to have the goods so sent to him. It is the usual course of trade for merchants receiving an order from a considerable distance for goods in small quantities to send the same by express, C. O. D., when the order is not from a regular customer or a party of known responsibility. That upon the receipt of said orders the respondent has in each case measured out the liquors called for in his order at his store in Whitehall aforesaid, and packed the same in jugs or other vessels, and attached to each package a tag, upon which was written the name and address of the party ordering the same, and delivered each package so directed and addressed, at Whitehall, aforesaid, to the National Express Company, a New York corporation, a common carrier, doing business between New York and Montreal and including the route between said Whitehall and said Rutland, and each of said packages also had upon said tag the name and business card of the respondent, and none of said packages were in any manner disguised, and all of them were sealed with wax. It was not stated on the jugs or tags what they contained. The respondent at the same time delivered to said express company a bill of said liquor, which said carrier placed in an envelope, marked C. O. D., which envelope had endorsed thereon, among other things, the following instructions: 'Do not deliver the whole or any part of the goods accompanying this bill until you receive pay therefor. Be careful to notice what money you receive, and, as far as practicable, send the same as received and follow the special instructions of the shipper, if any are given, on the bills. If goods are refused or the parties cannot be found, notify the office from whence received, with names and dates, and await further instructions'—meaning thereby that said express company should receive the amount of said bill upon the delivery of the package to the consignee, and that without payment of said bill the said liquor should not be delivered; that, in the usual and ordinary course of business of said carrier in such cases, the said express company delivered

each of said packages to the consignee named upon said tag, at Rutland, and at the same time and concurrently with such delivery received the amount of the said bill in the C. O. D. envelope, the amount of freight for the transportation of said package from Whitehall to Rutland, and the charges for returning said money to the respondent at Whitehall. The express company placed said money for the payment of said bill in the same envelope and returned it to the respondent at Whitehall. The respondent did nothing to or with said liquors after the said packages were delivered by him at said Whitehall to said common carrier, and the said several consignees received the same and made payment as aforesaid, at Rutland, as and under the contract made, as aforesaid, through their said orders so sent to the respondent at Whitehall. That it is the usual and ordinary course of business of said express company, in case goods are refused or the consignees cannot be found, for the office to which goods are sent to notify the office from which they were shipped to notify the consignor of the facts, and the consignor would be consulted and his orders taken and followed as to the disposition of the goods, and this would be the same whether goods were sent C. O. D. or otherwise. The respondent gave no special directions as to any of the packages shipped as aforesaid." It appears clearly, from this admission of facts, that the charges paid in Rutland, to the express company, when the empty jug was sent from Rutland, included only the charges for the transportation of the empty jug to Whitehall, and that the amount of freight for the transportation of the packages containing liquor, from Whitehall to Rutland, was paid when it was delivered to its consignee at Rutland, simultaneously with the payment of the bill for the liquor, and of the charges for returning the money to Whitehall.

The exceptions state that O'Neil requested the court to instruct the jury that the facts set forth in his admission did not constitute an offense against the statute, under the complaint in the cause, but the court refused so to hold, and he excepted; that he requested the court also to instruct the jury that, under the facts set forth in his admission, they ought to find him not guilty, but the court refused so to instruct the jury, and he excepted; that the court charged the jury that if they believed the facts set forth in the admission to be true, the same made a case upon which the jury should find a verdict of guilty against him, to which instruction he excepted; that evidence was given that at the March term, 1879, of the Rutland County

Court, he was convicted of selling, furnishing, and giving away intoxicating liquors; and that the court adjudged, upon the verdict and the evidence, that he was guilty of 457 offenses of selling intoxicating liquor without authority, as of a second conviction. The exceptions were allowed, and for their trial the sentence was respite, execution stayed, and the cause passed to the Supreme Court of Vermont.

The judgment of the county court, as entered, was, that O'Neil pay a fine of \$0,140, and the costs of prosecution, taxed at \$497.96, and stand committed until the sentence should be complied with; and that if the said fine and costs, and costs of commitment, ascertained to be 76 cents, the whole aggregating \$6,638.72, should not be paid before March 20, 1883, he should be confined at hard labor, in the house of correction at Rutland, for the term of 19,914 days.

The case was heard in the Supreme Court, and a decision was rendered in the General Term, the Chief Judge and six Assistant Judges being present, at October term, 1885, which is reported in 58 Vermont, 140. The judgment of the Supreme Court was, that the judgment of the county court was not in anywise erroneous or defective and there was not any error in the proceedings. O'Neil has sued out a writ of error from this court to review that judgment.

The trial and conviction of O'Neil in the county court were solely for "selling intoxicating liquor without authority." The punishment prescribed therefor by section 3802 was that "on the second conviction, he shall forfeit for each offense twenty dollars and costs of prosecution, and shall also be imprisoned one month." The term of confinement for 19,914 days was three days for each dollar of the \$6,638, under Section 4366 of the Revised Laws of Vermont, which prescribes the time of imprisonment in default of payment of the fine and costs in criminal cases. It is not assigned in this court, as error, in the assignment of errors, or in the brief for O'Neil, that he was subjected to cruel and unusual punishment, in violation of the Constitution of the United States. It appears by the report of the case in 58 Vermont, that he took the point in the Supreme Court of Vermont, that the statute of that State was repugnant to the 8th Amendment to the Constitution of the United States and to that of Vermont, in that it allowed "cruel and unusual punishment." That court said, in its opinion: "The constitutional inhibition of cruel and unusual punishments, or excessive fines or bail, has no application. The punishment imposed by statute for the offense with which the respondent, O'Neil,

is charged, cannot be said to be excessive or oppressive. If he has subjected himself to a severe penalty, it is simply because he has committed a great many such offenses. It would scarcely be competent for a person to assail the constitutionality of the statute prescribing a punishment for burglary, on the ground that he had committed so many burglaries that, if punishment for each were inflicted on him, he might be kept in prison for life. The mere fact that cumulative punishments may be imposed for distinct offenses in the same prosecution is not material upon this question. If the penalty were unreasonably severe for a single offense, the constitutional question might be urged; but here the unreasonableness is only in the number of offenses which the respondent has committed." We forbear the consideration of this question, because as a Federal question, it is not assigned as error, nor even suggested in the brief of the plaintiff in error; and, so far as it is a question arising under the Constitution of Vermont, it is not within our province. Moreover, as a Federal question, it has always been ruled that the 8th Amendment to the Constitution of the United States does not apply to the States. *Pervear v. The Commonwealth*, 5 Wall., 475.

The opinion of the Supreme Court of Vermont was delivered by Chief Judge Royce. The case being one for selling intoxicating liquors contrary to law, the court stated the question to be whether the liquors were sold by O'Neil, in contemplation of law, in Rutland County, and said that the answer depended upon whether the National Express Company, by which the liquors were delivered to the consignee thereof, was in law the agent of the vendor or of the vendees; that, if the purchase and sale of the liquors was fully completed in the State of New York, so that, upon delivery of them to the express company for transportation, the title vested in the consignees, as in the case of a completed and unconditional sale, then no offense against the law of Vermont had been committed; but that if, on the other hand, the sale, by its terms, could become complete, so as to pass the title in the liquors to the consignees, only upon the doing of some act, or the fulfilling of some condition precedent, after they reached Rutland, then the rulings of the county court upon the question of the offense were correct.

The court then said: "The liquors were ordered by residents of Vermont from dealers doing business in the State of New York, who selected from their stock such quantities and kinds of goods as they thought proper in com-

pliance with the terms of the orders, put them up in packages, directed them to the consignee, and delivered them to the express company as a common carrier of goods for transportation, accompanied with a bill, or invoice, for collection. The shipment was in each instance, which it is necessary here to consider, 'C. O. D. ;' and the cases show that the effect of the transaction was a direction by the shipper to the express company not to deliver the goods to the consignees except upon payment of the amount specified in the C. O. D. bills, together with the charges for the transportation of the packages and for the return of the money paid. This direction was understood by the express company, which received the shipments coupled therewith."

The court then remarked that whether or not, and when, the legal title in property, sold passes from the vendor to the vendee, is always a question of the intention of the parties, which is to be gathered from their acts and all the facts and circumstances of the case taken together, and cited *Mason v. Thompson*, 18 Pickering, 305; *Benjamin on Sales*, sections 311, 319, note c, and 320, note d; and *Robert's Vermont Digest*, 610 *et seq.* It then proceeded: "In the cases under consideration," (viz, the present case, and another case against O'Neil, for keeping intoxicating liquors with the intent to sell, etc.), "the vendors of the liquors shipped them in accordance with the terms of the orders received, and the mode of shipment was as above stated. They delivered the packages of liquors, properly addressed to the several persons ordering the same, to the express company, to be transported by that company and delivered by it to the consignees upon fulfillment by them of a specified condition precedent, namely, payment of the purchase price and transportation charges and not otherwise. Attached to the very body of the contract, and to the act of delivery to the carrier, was the condition of payment before delivery of possession to the consignee. With this condition unfulfilled and not waived, it would be impossible to say that a delivery to the carrier was intended by the consignor as a delivery to the consignee, or as a surrender of the legal title. The goods were intrusted to the carrier to transport to the place of destination named, there to present them for acceptance to the consignee, and if he accepted them and paid the accompanying invoice and the transportation charges, to deliver them to him; otherwise, to notify the consignor and hold them subject to his order. It is difficult to see how a seller could more positively and

unequivocally express his intention not to relinquish his right of property or possession in goods until payment of the purchase price than by this method of shipment. We do not think the case is distinguishable in principle from that of a vendor who sends his clerk or agent to deliver the goods, or forwards them to, or makes them deliverable upon the order of, his agent, with instructions not to deliver them except on payment of the price, or performance of some other specified condition precedent by the vendee. The vendors made the express company their agent in the matter of the delivery of the goods, with instructions not to part with the possession of them except upon prior or contemporaneous receipt of the price. The contract of sale, therefore, remained inchoate or executory while the goods were in transit, or in the hands of the express company, and could only become executed and complete by their delivery to the consignee. There was a completed executory contract of sale in New York; but the completed sale was, or was to be, in this State."

The foregoing comprises all that was said by the Supreme Court material to the case now before us.

It is assigned for error, that the Supreme Court held (1) that the sale of intoxicating liquor in New York, by a citizen of that State lawfully, was a crime under the statute law of Vermont, when the liquor so sold was shipped C. O. D. to the purchaser in Vermont, by his direction; (2) that a shipment of liquors by a common carrier from New York, by a citizen of that State to a purchaser in Vermont, under the circumstances of this case, was a crime under the statute of Vermont, which could be punished by the courts of Vermont; (3) that such statute was not in conflict with the clause of the Constitution of the United States which gives Congress power to regulate commerce with foreign nations and among the several States and with the Indian tribes; (4) that O'Neil, under the facts in this case, was amenable to the statute law of Vermont prohibiting the sale, furnishing, and giving away of intoxicating liquors; and (5) that the construction the court gave to that statute, and its application to the facts of this case, was not in conflict with Section 8 of Article 1 of the Constitution of the United States, in regard to the regulation of commerce. It is contended for the State of Vermont that this court has no jurisdiction of this case, because the record does not present a Federal question. We are of opinion that this contention is correct, and that the writ of error must be dismissed for want of jurisdiction in this court.

No point on the commerce clause of the Constitution of the United States was taken in the county court, in regard to the present case, or considered by the Supreme Court of Vermont. One reason for this may have been that the decision in *Peirce v. New Hampshire* 5 How., 504, had not theretofore been in terms overruled or questioned by this court, the cases of *Bowman v. Chicago, etc., Railway Co.*, 125 U. S., 465, and *Leisy v. Hardin*, 135 U. S., 100, not having been then decided. The only points raised in the county court, according to the exceptions, were, that the facts set forth in the written admission of O'Neil did not constitute an offense against the statute of Vermont under the complaint, and that he ought to be found not guilty under the facts so set forth. The matters thus excepted to were too general to call the attention of the State court to the commerce clause of the Constitution, or to any right claimed under it. *Farney v. Towle*, 1 Black, 350; *Day v. Gallup*, 2 Wall., 97; *Edwards v. Elliott*, 21 Wall., 532; *Warfield v. Chaffe*, 91 U. S., 690; *Susquehanna Boom Co. v. West Branch Boom Co.*, 110 U. S., 57; *Clark v. Pennsylvania*, 128 U. S., 395.

The only question considered by the Supreme Court, in its opinion, in regard to the present case, was whether the liquor in question was sold by O'Neil at Rutland or at Whitehall, so as to fall within or without the statute of Vermont, and the court arrived at the conclusion that the completed sale was in Vermont. That does not involve any Federal question.

In its opinion in 58 Vermont, 140, the Supreme Court considered not only the present case and the case before referred to against O'Neil for keeping intoxicating liquors with intent to sell, etc., but also two other cases, being proceedings *in rem* for the condemnation of intoxicating liquor on its seizure, in which latter two cases the National Express Company was claimant, and in one of them the liquors were forfeited, while in the other of them some of the liquors, (being those which had been paid for to the shipper at Whitehall, New York,) were returned to the claimant and the remainder forfeited.

In its opinion, the court said: "Concerning the claim that section 8" of article 1, "of the Federal Constitution, conferring upon Congress the exclusive right to regulate commerce among the States, has application it is sufficient to say that no regulation of or interference with interstate commerce is attempted." That this observation had reference solely to the two seizure cases, and not to the present case, is apparent from the fact that the court immediately went

on to say: "If an express company or any other carrier or person, natural or corporate, has in possession within this State an article in itself dangerous to the community, or an article intended for unlawful or criminal use within the State, it is a necessary incident of the police powers of the State that such article should be subject to seizure for the protection of the community." The liquors in those two cases *in rem* were seized by the sheriff at Rutland, while in the possession of the National Express Company, some of them having been delivered to that company at Troy, New York, and some at Whitehall, New York, and all of them having been ordered by persons at Rutland for their own use and not for sale or distribution contrary to law.

The Supreme Court of Vermont decided the case before us upon a ground broad enough to maintain its judgment without considering any Federal question. No Federal question was presented for its decision, as to this case, nor was the decision of a Federal question necessary to the determination of this case, nor was any actually decided, nor does it appear that the judgment as rendered could not have been given without deciding one. *Hale v. Akers*, 132 U. S., 554, 555, and cases there cited; *San Francisco v. Itsell*, 133 U. S., 65; *Hopkins v. McLure*, 133 U. S., 380; *Blount v. Walker*, 134 U. S., 607; *Beatty v. Benton*, 135 U. S., 244; *Johnson v. Risk*, 137 U. S., 300; *Butler v. Gage*, 138 U. S., 52; *Beaupré v. Noyes*, 138 U. S., 397; *Leeper v. Texas*, 139 U. S., 462; *Henderson Bridge Co. v. Henderson City*, 141 U. S., 679; *Hammond v. Johnston*, 142 U. S., 73; *New Orleans v. New Orleans Water Works Co.*, 142 U. S., 79.

It was entirely immaterial how the liquor sold by O'Neil at Rutland came to be there, for sale there—whether it was made there, or whether it was brought in some way from the State of New York. The only question was whether it was at Rutland so as to be capable of sale there, and whether it was sold there.

Moreover, under the practice in the Supreme Court of Vermont, the very error relied upon must appear affirmatively in the exceptions. *Sequin v. Peterson*, 45 Vt., 255; *State v. Preston*, 48 Vt., 12; *Hathaway v. National Life Ins. Co.*, 48 Vt., 335; *State v. Brunelle*, 57 Vt., 580; *Spaulding v. Warner*, 57 Vt., 654; *Rowell v. Fuller*, 59 Vt., 688.

The result is that the writ of error must be dismissed.

Mr. Justice HARLAN and Mr. Justice BREWER dissented, claiming that a Federal question was presented by the record.

The United States Circuit Court of Appeals.

The United States Circuit Court of Appeals convened at 12 o'clock yesterday. The judges were attired in black silk gowns similar to the official robes of the United States Supreme Court Justices, and the forms and order of transacting business are also similar to those of that court. The judges entered the court room and occupied the bench in the following named order: Hughes, Bond, Goff, and Morris. On the approach of the justices, George W. Addison, crier of the new court while in session at Baltimore, announced their entrance and everyone arose and stood until the justices had reached their chairs. The audience then bowed and resumed their seats. Judge Bond called for motions and Mr. Robert H. Smith moved that the following named gentlemen be admitted as attorneys of the court:

John L. Thomas, R. P. H. Staub, D. H. Chamberlain, William S. Thomas, Chas. Herzog, James E. Carr, jr., H. Arthur Stump, Charles H. Carter, Henry Stockbridge, jr., John C. King, Francis P. Stevens, Arthur George Brown, Henry C. Kennard, W. Benton Crisp, John C. Kerlin, Julian S. Jones, J. Cookman Boyd, H. V. D. Johns, J. F. Bullitt, Geo. M. Sharp, Albert Ritchie, W. Starr Gephart, Archibald Stirling, J. E. Stirling, Henry D. Loney, William Reynolds, Skipwith Wilmer, E. J. D. Cross, F. V. Rhodes, R. L. Rodgers, R. D. Morrison, Joseph Packard, Phil. H. Tuck, C. D. Barnitz, M. R. Walter, M. S. Wiel, F. H. Hack, F. P. Clark, William T. Brantley, F. W. Story, D. S. Briscoe, William J. O'Brien, D. L. Brinton, William F. Porter, Harry M. Benninger, R. R. Brown, William F. Brune, William J. Cross, T. F. Hiskey, Frederick Leist, S. J. Poe, and A. Robinson. Mr. Maloney, clerk of the court, administered the oath and the then duly qualified attorneys signed the book, after which the court proceeded with the regular course of business.—*Baltimore Daily Record*, Apr. 13, 1892.

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GREAT are the powers of the Magna Charta, and wonderful the liberties of Englishmen! It has been recently decided in Blackburn County Court that where a member of a congregation had sat out the vicar's sermons but objected to listening to the curate's, and for this reason attempted to leave the church but was detained by a "sidesman," and thus compelled nolens volens to hear that which tired him exceedingly, he could recover in an action for false imprisonment. Joyous and refreshing is it to learn that one cannot be compelled to sit through a dreary sermon.

Supreme Court of the United States.

THE COLUMBIA AND PUGET SOUND RAILROAD COMPANY, PLAINTIFF IN ERROR,

v.

WILLARD C. HAWTHORNE.

1. The writ of error directly presents for the decision of this court the question whether, in an action for injuries caused by a machine alleged to be negligently constructed, a subsequent alteration or repair of the machine by the defendant is competent evidence of negligence in its original construction.
2. It is now settled, upon much consideration, by the decisions of the highest courts of most of the States in which the question has arisen, that such evidence is incompetent.
3. This court approves the opinion of the court in *Morse v. Minneapolis and St. Louis Railway*, 20 Minn., 465, that evidence of this kind ought not to be admitted under any circumstances.

IN ERROR to the Supreme Court of the Territory of Washington.

This was an action brought in a district court of the Territory of Washington, against a corporation owning a saw mill, by a man employed in operating a machine therein, called a trimmer, to recover damages for the defendant's negligence in providing an unsafe and defective machine, whereby one of the pulleys, over which ran the belt transmitting power to the saw, fell upon and injured the plaintiff. The defendant denied any negligence on its part, and averred negligence on the part of the plaintiff.

At the trial, the plaintiff introduced evidence tending to show that the pulley, weighing about fifty pounds, revolved around a stationary shaft made of gas pipe, with nothing to hold the pulley on but a common cap or nut screwed on the end of the pipe, and its thread running in the same way as the pulley, and liable to be unscrewed by the working of the pulley; that the nut became unscrewed and came off, so that the pulley fell upon and greatly injured the plaintiff; and that if the nut had been properly put on, with a bolt through the shaft, the accident could not have happened.

The plaintiff's counsel asked a witness whether there had been any change in the machinery since the accident. Thereupon the following colloquy took place:

Defendant's counsel. "We object to that. The rule is well understood, and as your honor has already given it in other cases, that a person is not bound to furnish the best known machinery, but to furnish ma-

chinery reasonably safe. It is not a question as to what we have done with the machinery in the last few years or months since the accident occurred, but what was the condition then."

The COURT. "The rule is quite well settled, I think, that where an accident occurs through defective machinery or defective fixtures or the machine itself, if that is shown to be true, then a change, repair or substitution of something else for the defective machinery is admissible as showing or tending to show the fact. I think that is quite well settled."

Defendant's counsel. "I thoroughly concur with the court as to the rule."

Plaintiff's counsel. "We propose to show changes."

The COURT. "I think it is admissible."

Defendant's counsel. "We will save an exception."

The COURT. "Exception allowed."

The witness then answered that there had been changes since the accident, and that they consisted in putting a rod through the shaft and gammon nuts on the end of the rod to keep the pulleys on, and in putting up some planks underneath the pulleys to keep them from falling down. To the admission of the evidence of each of these changes an exception was taken by the defendant and allowed by the judge.

At the close of all the evidence for the plaintiff (which it is unnecessary to state), the defendant moved "for a judgment of nonsuit, on the ground that the plaintiff had failed to prove a sufficient cause for the jury;" and an exception to the overruling of this motion was taken by the defendant and allowed by the court.

The defendant then introduced evidence, and the case was argued by counsel and submitted by the court to the jury, who returned a verdict of \$10,000 for the plaintiff, upon which judgment was rendered. The defendant appealed to the Supreme Court of the Territory, which affirmed the judgment. 3 Wash. Ter., 353, 364. The defendant sued out this writ of error.

Decided April 4, 1892.

Mr. Justice GRAY, after stating the case as above, delivered the opinion of the court:

The question of the sufficiency of the evidence for the plaintiff to support his action cannot be considered by this court. It has repeatedly been decided that a request for a ruling that upon the evidence introduced the plaintiff is not entitled to

recover cannot be made by the defendant, as a matter of right, unless at the close of the whole evidence; and that if the defendant, at the close of the plaintiff's evidence, and without resting his own case, requests and is refused such a ruling, the refusal cannot be assigned for error. Grand Trunk Railway v. Cummings, 106 U. S., 700; Accident Ins. Co. v. Crandall, 120 U. S., 527; Northern Pac. Railroad v. Mares, 123 U. S., 710; Robertson v. Perkins, 129 U. S., 233.

The only other exception argued is to the admission of evidence of changes in the machinery after the accident.

It was argued for the plaintiff that this exception was not open to the defendant, because it had been waived by his counsel saying, after the first ruling of the court on the subject, "I thoroughly concur with the court as to the rule." Assuming these words to be accurately reported, it is not wholly clear whether they refer to the rule as to evidence of subsequent changes, or to the rule, mentioned just before, as to the degree of care required of the defendant. That they were not understood, either by the counsel or by the court, as waiving the objection to evidence of subsequent changes, is shown by the plaintiff's counsel thereupon saying, "We propose to show changes;" and by the court ruling them to be admissible, and allowing an exception to this ruling, and immediately afterwards allowing two other exceptions to evidence on the same subject. And the question of the admissibility of this testimony was considered and decided by the Supreme Court of the Territory. 3 Wash. Ter., 353, 364.

The writ of error, therefore, directly presents for the decision of this court the question whether, in an action for injuries caused by a machine alleged to be negligently constructed, a subsequent alteration or repair of the machine by the defendant is competent evidence of negligence in its original construction.

Upon this question there has been some difference of opinion in the courts of the several States. But it is now settled, upon much consideration, by the decisions of the highest courts of most of the States in which the question has arisen, that the evidence is incompetent, because the taking of such precautions against the future is not to be construed as an admission of responsibility for the past, has no legitimate tendency to prove that the defendant had been negligent before the accident happened, and is calcu-

lated to distract the minds of the jury from the real issue, and to create a prejudice against the defendant. Morse v. Minneapolis & St. Louis Railway, 30 Minnesota, 465; Corcoran v. Peekskill, 108 N. Y., 151; Nalley v. Hartford Carpet Co., 51 Connecticut, 524; Ely v. St. Louis, &c., Railway, 77 Missouri, 34; Missouri Pacific Railway v. Hennessey, 75 Texas, 155; Terre Haute & Indianapolis Railroad v. Clem, 123 Indiana, 15; Hodges v. Percival, 132 Illinois, 53; Lombard v. East Tawas, 86 Michigan, 14; Shinners v. Proprietors of Locks & Canals, 154 Mass., 168.

As was pointed out by the court in the last case, the decision in Readman v. Conway, 126 Mass., 374, 377, cited by this plaintiff, has no bearing upon this question, but simply held that in an action for injuries from a defect in a platform, brought against the owners of the land, who defended on the ground that the duty of keeping the platform in repair belonged to their tenants and not to themselves, the defendant's acts in making general repairs of the platform after the accident "were in the nature of admissions that it was their duty to keep the platform in repair, and were therefore competent."

The only States, so far as we are informed, in which subsequent changes are held to be evidence of prior negligence, are Pennsylvania and Kansas, the decisions in which are supported by no satisfactory reasons. McKee v. Bidwell, 74 Penn. St., 218, 225, and cases cited; St. Louis & San Francisco Railway v. Weaver, 35 Kansas, 412.

The true rule and the reasons for it were well expressed in Morse v. Minneapolis & St. Louis Railway, above cited, in which Mr. Justice Mitchell, delivering the unanimous opinion of the Supreme Court of Minnesota, after referring to earlier opinions of the same court the other way, said: "But, on mature reflection, we have concluded that evidence of this kind ought not to be admitted under any circumstances, and that the rule heretofore adopted by this court is on principle wrong; not for the reason given by some courts, that the acts of the employees in making such repairs are not admissible against their principals, but upon the broader ground that such acts afford no legitimate basis for construing such an act as an admission of previous neglect of duty. A person may have exercised all the care which the law required, and yet, in the light of his new experience, after an unexpected accident has occurred, and as a

measure of extreme caution, he may adopt additional safeguards. The more careful a person is, the more regard he has for the lives of others, the more likely he would be to do so, and it would seem unjust that he could not do so without being liable to have such acts construed as an admission of prior negligence. We think such a rule puts an unfair interpretation upon human conduct, and virtually holds out an inducement for continued negligence." 30 Minnesota, 465, 468.

The same rule appears to be well settled in England. In a case in which it was affirmed by the Court of Exchequer, Baron Bramewell said: "People do not furnish evidence against themselves simply by adopting a new plan in order to prevent the recurrence of an accident. I think that a proposition to the contrary would be barbarous. It would be, as I have often had occasion to tell juries, to hold that, because the world gets wiser as it gets older, therefore it was foolish before." Hart v. Lancashire & Yorkshire Railway, 21 Law Times, N. S., 261, 263.

As the incompetent evidence admitted against the defendant's exception bore upon one of the principal issues on trial, and tended to prejudice the jury against the defendant, and it cannot be known how much the jury were influenced by it, its admission requires that the

Judgment be reversed, and the case remanded to the Supreme Court of the State of Washington, with directions to set aside the verdict and to order a new trial.

EJECTMENT—Evidence—Town Records—Parol Partition.—(1) A written instrument dated in 1767, produced from the town clerk's records, signed and sealed by twenty-four persons, but not witnessed or acknowledged, which recites that the signers are the proprietors of a tract of land which had been granted to the town, is not evidence that such persons were the proprietors, as against a person who does not claim in privity with any of them. Hardenburgh v. Lakin, 47 N. Y., 109. (2) Proof of actual entry and exclusive possession are necessary to render valid a title based on a parol partition. March 1, 1892. Sanger v. Merritt. Opinion by Maynard, J. 15 N. Y. Supp., 511, affirmed.—*Albany Law Journal.*

"WHAT did Mr. Roberts say?" asked the counsel; and the witness replied, "He wasn't at home, sir; so I didn't see him."—*Green Bag.*

NEWLY DISCOVERED EVIDENCE.—New Trial. The rule that a new trial will not be granted for newly discovered evidence that is merely cumulative does not apply to evidence which is cumulative of the testimony on cross examination of an adverse witness, incidentally favorable to the moving party.

One of the two witnesses to a will testified that the testatrix signed the will in his presence and that he subscribed to it in her presence, but the other, on cross examination, testified that testatrix signed it in the witnesses' office, and that he took it to the residence of the first witness, who signed it there, testatrix not being present: *Held*, that newly discovered evidence that at the time of signing the first witness was at home sick, was sufficient to justify granting a new trial. *White v. Nafus*, Iowa, 51 N. W. Rep., 5.

CONVEYANCE BETWEEN HUSBAND AND WIFE. —In a suit to set aside a deed from a husband to his wife shortly before his death, as in fraud of his creditors, no actual fraud was proven, but no consideration was shown except a claim by defendant that about thirteen years previous to her husband's death he received some money from her, and that she at one time joined him in a mortgage on their homestead, as a consideration for which he turned over to her some securities. It did not appear that these transactions were considered in executing the deed, and defendant was unable to fix the amount given her husband nearer than \$200 or \$300, and was unable to describe the securities, she having kept them but a short time, and returned them to her husband: *Held*, That the deed was properly set aside as without consideration. *Felker v. Chubb* (Mich.), 51 N. W. Rep., 1111.

Legal Notices.

Rule of Court.

RULE 20. * * * * Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

FIRST INSERTION.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Bartow L. Walker et al. { Equity. No. 12,900.

Gerard H. Turner et al. { v.

George E. Hamilton and John Ridout, trustees in the above cause, having reported to the court that they have sold lots 17 and 18 in square 24, Washington, D. C., to Bartow L. Walker, at private sale, for the sum of \$2,508.64, it is this 16th day of April, A. D. 1892, ordered that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 16th day of May, 1892.

Provided a copy of this order shall be published in the Washington Law Reporter for the space of three weeks by successive weekly insertions in said paper, before said last named day.

A. B. HAGNER, Justice.

A true copy. Test: J. R. Young, Clerk.

16 By M. A. Clancy, Asst. Clerk.

[Filed April 18, 1892. J. R. Young, Clerk.]

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 18th day of April, 1892.

Joseph Schneider, for the use of Westel W. Willoughby, Plaintiff,

v.

Arthur E. Bateman, Charles E. Coon, Walter Watson and Harvey Durand, Partners, trading under the name of and style of Bateman & Company, Defendants.

At Law. No. 32,559.

On motion of the plaintiff, by W. Willoughby, his attorney, it is ordered that the defendant, HARVEY DUBAND, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to recover a judgment against the defendants for \$1,845, with interest from December 31, 1890, and to maintain an attachment upon the property of the defendants or either of them, situated within the District of Columbia, and which has been levied upon in this suit for this amount.

M. V. MONTGOMERY, Asso. Justice.

True copy. Test: J. R. Young, Clerk.

16

By H. W. Hodges, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 18th day of April, 1892.

Mary Ida Stanton

v. } No. 18,806. Eq. Docket 33.

Horace Baxter Stanton et al. } On motion of the plaintiff, by Mr. James F. Hood, her solicitor, it is ordered that the defendants, WILLIAM PIT STANTON, MARGARET SCRUTON, HELEN MERERVE, and ELIZABETH LEIGHTON, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to sell the real estate of the infant defendant, Horace Baxter Stanton.

By the Court. A. B. HAGNER, Justice, &c.

True copy. Test: J. R. Young, Clerk, &c.

16

By M. A. Clancy, Asst. Clerk.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of JOHN EDWIN MASON, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of April, 1892.

HENRY M. BAKER, Executor,

16 Henry M. Baker, Proctor. 1411 F Street, n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of ISAAC BOSTON, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of April 1892.

MATTHIAS H. HUNTER,

16 Bennings, D. C. Robert W. McPherson, Proctor, 1429 New York Ave., Room 8.

This is to Give Notice

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of DOMINICK McMENAMIN, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 9th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 9th day of April, 1892.

JAMES T. RYON,

OWEN DONNELLY,

16 Care of Edwards & Barnard, 500 5th St., n. w.

Edwards & Barnard, Proctors.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

Theodore Sheckels
v.
George J. Goddard et al. } In Equity. No. 18,406.

Theodore Sheckels, the trustee appointed by decree of the court in this cause to make sale of the west twenty-four (24) feet front, by the depth thereof, of lot numbered fifteen (15) in square numbered four hundred and fifty-three (453), in the city of Washington, with the improvements thereon, having reported the sale thereof to Herman Gausch, for the sum of nine thousand and ninety dollars (\$9,090), on motion of complainant by his solicitors, it is, this 18th day of April, 1892, ordered, adjudged and decreed that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 12th day of May, 1892.

Provided that a copy of this decree be published in the Washington Law Reporter once in each week for three successive weeks prior to said date.

A. B. HAGNER, Justice.

A true copy. Test: J. R. Young, Clerk.
16 By M. A. Clancy, Asst. Clerk.
[Filed April 18, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 19th day of April, 1892.

Rosamond Watson
v.
Alexander Watson. } No. 18,741. Eq. Docket 33.

On motion of the plaintiff, by Mr. Campbell Carrington, her solicitor, it is ordered that the defendant, ALEXANDER WATSON, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is an absolute divorce upon the ground of willful desertion and abandonment, by the party complained of, against the party complaining, for the full uninterrupted space of two years, from the filing of this cause.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
16 By M. A. Clancy, Asst. Clerk.
[Filed April 19, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

April 16th, 1892.

In the case of Mary Ida Stanton, Executrix of JOSHUA OTIS STANTON, deceased, the Executrix aforesaid has, with the approval of the court, appointed Friday, the 20th day of May, A. D. 1892, at 10 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executrix will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
16 No. 4404. Admn. Doc. 16. James F. Hood, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

April 16th, 1892.

In the case of William Bryan, Executor of REBECCA COOPER, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 20th day of May, A. D. 1892, at one o'clock p. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
16 No. 2679. Ad. Doc. 12. E. H. Thomas, Proctor.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**
Holding a Special Term for Orphans' Court Business.

April 16th, 1892.

In the matter of the Estate of HENRY B. JAMES, late of the city of Washington, D. C., deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Gertrude James and Henry K. Leaver.

All persons interested are hereby notified to appear in this Court on Friday the 20th day of May next, at one o'clock p. m., to show cause why the said Will should not be proved and admitted to probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT.

Register of Wills for the District of Columbia.
16 No. 4336. Ad. Doc. 17. Wm. F. Mattingly, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The Washington Loan & Trust Co., Administrator.

v. Equity. No. 18,583.

Thomas V. Hammond et al.

John B. Larmer, the trustee appointed by a decree passed herein on the second day of March, A. D. 1892, for the sale of the real estate in the bill filed in said cause described, having represented that he, after having complied with the requirements of said decree as to advertisements, &c., offered said real estate for sale at public auction in front of the premises on the 18th day of March, A. D. 1892, but did not receive an adequate bid therefor and did not sell the same; and that since said time has been endeavoring to sell said property and has succeeded in obtaining an offer from Louise M. Owens for the purchase of said property for the sum of seventy-eight hundred dollars (\$7,800) cash:

It is this 14th day of April, A. D. 1892, ordered that the sale of said property to the said Louise M. Owens for the sum of seventy-eight hundred dollars (\$7,800) cash, be ratified and confirmed, unless cause to the contrary be shown by the 14th day of May, A. D. 1892.

Provided that notice of this order be published once a week for three weeks prior to the said 14th day of May, A. D. 1892, in the Evening Star and the Washington Law Reporter.

A. B. HAGNER.
A true copy. Test: J. R. Young, Clerk.
16 By M. A. Clancy, Asst. Clerk.

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of HARRIET NISBET LECONTE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 11th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 11th day of April, 1892.
16 EVA LECONTE,
Archibald Young, Proctor, Sun Bldg. 1745 Corcoran St.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 20th day of April 1892.

Anna Seifriz } v. No. 18,809. Docket 33.
Paul Seifriz.

On motion of the plaintiff, by Messrs. Worthington & Heald, her solicitors, it is ordered that the defendant, PAUL SEIFRIZ, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a decree of divorce from the bond of marriage with the defendant on the ground of desertion.

A. B. HAGNER.
A true copy. Test: J. R. Young, Clerk.
16 By M. A. Clancy, Asst. Clerk.
[Filed April 20, 1892. J. R. Young, Clerk.]

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of MARTHA J. POTTS, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of April, 1892.

16 A. C. Richards, Proctor. J. W. ELDER,
511 6th St., n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 21st day of April, 1892.

Almae P. Bogue } v. No. 18,485. Equity Docket.
Elizabeth V. Bogue.

On motion of the plaintiff, by Mr. L. Cabell Williamson, his solicitor, it is ordered that the defendant, ELIZABETH V. BOGUE, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for divorce a vinculo matrimonii on the ground of desertion.

Provided a copy of this order be published once a week for three successive weeks previous to said day in the Washington Law Reporter and in the Washington Post.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk.
16 By M. A. Clancy, Asst. Clerk.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of BENJAMIN THOMAS REILLY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of April, 1892.

16 R. Ross Perry, Proctor. JULIA POINDEXTER,
1634 Conn. Avenue.

This is to Give Notice

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphan's Court business, Letters Testamentary on the personal estate of ANN CLANCY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 19th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 19th day of April, 1892.

16 Padgett & Forrest, Proctors. GEORGE P. ZURHORST,
MICHAEL McCORMICK,
227 Pa. Ave., s. e.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of JOHN ADAM SPROESSER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of March, 1892.

16 Julius A. Maedel, Proctor. MARY E. C. M. SPROESSER,
mark 26½ 7th St., n. w.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

The 18th day of April, 1892.

Harvey Durand

v. } No. 12,782. Equity Docket 31.

Arthur E. Bateman and others.

On motion of the plaintiff, by Mr. A. S. Worthington, his solicitor, it is ordered that the defendants, WILLIAM W. MACKALL, Jr., LAURA R. GREEN, AMOS H. PLUMB, MARY PLUMB, RUTH PLUMB, (a minor), CARRIE PLUMB, (a minor), and PRESTON PLUMB, (a minor) cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to ascertain and determine the interest of the complainant, Harvey Durand, in certain real estate in the District of Columbia, comprising about two hundred and forty acres and lying along both sides of Massachusetts avenue, extended between Rock Creek and the Tenleytown Road; and to have Arthur E. Bateman removed from his position as one of the trustees holding and managing said real estate, and also to have the court supervise and direct the execution of the trust under which said real estate is now held by said Bateman and others.

Provided a copy of this order be published in the meantime once a week for three weeks, beginning with the present week, in the Washington Law Reporter and in the Evening Star published, in said District.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
16 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business,

April 16th, 1892.

In the case of John Edwin Mattern, Executor of ANNA S. MATTERN, deceased, the Executor aforesaid has, with the approval of the court, appointed Friday, the 20th day of May, A. D. 1892, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
16 No. 4871. Ad. Doc. 16. Leon Tobriner, Proctor.

SECOND INSERTION.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of MICHAEL BELCHER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 11th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 11th day of April, 1892.

THOMAS G. ADDISON,
Care of Waters & Taylor, Attorneys,

15 Waters & Taylor, Proctors. Fendall Bldg.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Carrie L. Helke } v. In Equity. No. 13,739.

Oswald Helke. } This cause coming on to be heard on motion of Samuel D. Truitt, counsel for complainant, and it appearing to the court that the summons issued in said cause has been returned not to be found, and it further appearing to the court from the affidavit filed herein, that the defendant is a non-resident, it is therefore, this 7th day of April, A. D. 1892, ordered, that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after publication hereof, providing a copy of this order be published once a week for three successive weeks in the Washington Law Reporter.

The object of this suit is to secure an absolute divorce from the defendant on the grounds of adultery and desertion.

A. B. HAGNER, Asso. Justice.
A true copy. Test: J. R. Young, Clerk.
15 By M. A. Clancy, Asst. Clerk.
[Filed April 7, 1892. J. R. Young, Clerk.]

Legal Notices

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
 Lydia J. Shaw
 v.
 John H. Shaw. } In Equity. No. 18,779.

This cause coming on to be heard on motion of complainant and it appearing to the court that the summons issued in said cause has been returned not to be found and it further appearing to the court from the affidavit filed herein, that the defendant is a non-resident; it is therefore this 6th day of April, A. D. 1892, ordered that the defendant cause his appearance to be entered herein on or before the first rule-day, occurring forty days after publication hereof, providing a copy of this order be published once a week for three successive weeks in the Washington Law Reporter.

The object of this suit is to secure an absolute divorce from the defendant on the ground of desertion.

A. B. HAGNER, Asst. Justice.
 A true copy. Test: J. R. Young, Clerk.
 15 By M. A. Clancy, Asst. Clerk.
 [Filed April 6, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
 Edward Hoeke
 v.
 Martin V. B. Bogan et al. } No. 18,649. Equity Doc. 38.

It is ordered this 6th day of April, A. D. 1892, that the defendant, ORAN B. CILLEY, enter his appearance herein on or before the first rule-day occurring forty days after this day; otherwise this cause will be proceeded with as in case of default.

Provided a copy of this order be published in the Washington Law Reporter for the space of three weeks by successive weekly insertions in said paper.

The object of this suit is to correct an error in the deed recorded in Liber No. 775, folio 241, of the land records of the District of Columbia.

A. B. HAGNER.
 A true copy. Test: J. R. Young, Clerk.
 15 By M. A. Clancy, Asst. Clerk.
 [Filed April 6, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
 The eighth day of April, 1892.

Theodore E. Spencer
 v.
 Estella F. Spencer. } No. 18,812. Equity Docket 38.

On motion of the plaintiff, by Mr. Joseph J. McNally, his solicitor, it is ordered that the defendant, ESTELLA F. SPENCER, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce *a vinculo matrimonii* on the ground of willful desertion and abandonment for the full and uninterrupted period of two years and more before the filing of complainant's bill.

And further that complainant have the custody of the infant children.

This notice to be published in the Washington Law Reporter.

By the Court. A. B. HAGNER, Justice, &c.
 True copy. Test: J. R. Young, Clerk, &c.
 15 By M. A. Clancy, Asst. Clerk.
 [Filed April 8, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
 The eighth day of April, 1892.

William E. Hodge
 v.
 Robert Mason et al. } No. 18,594. Eq. Docket 38.

On motion of the complainant by Thomas M. Fields, his solicitor, it is ordered that the respondent, MARTHA W. BARRITZ, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to enforce payment of judgment at law No. 32,205, by sale of the interest of Robert Mason in lot numbered two hundred and forty-three (243) in T. F. Schneider's subdivision in square numbered three hundred and sixty-two (362) in the city of Washington in the District of Columbia.

Provided a copy of this order be published once a week for each of the three successive weeks next before said rule-day in the Washington Law Reporter and the Evening Star.

By the Court. A. B. HAGNER, Justice, &c.
 True copy. Test: J. R. Young, Clerk, &c.
 15 By M. A. Clancy, Asst. Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
 Holding a Special Term for Orphans' Court Business.

April 8th, 1892.

In the matter of the Estate of ROBERT McMURDY, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by Robert H. McMurdy and Helen B. McMurdy.

All persons interested are hereby notified to appear in this court on Friday the 20th day of May next, at one o'clock P. M., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star previous to the said day.

By the Court. A. B. HAGNER, Justice. L. P. WRIGHT, Register of Wills for the District of Columbia.
 15 No. 4922. Ad. Doc. 17. Chas. W. Needham, Proctor for Petitioners.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
 Holding a Special Term for Orphans' Court Business.

April 8th, 1892.

In the case of Edward A. Newman, Executor of ANN JANE NEWMAN, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 8th day of May, A. D. 1892, at one o'clock p. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: L. P. WRIGHT, Register of Wills for the District of Columbia.
 15 No. 4800. Ad. Doc. 16.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
 Holding a Special Term for Orphans' Court Business.

April 8th, 1892.

In the matter of the Estate of CHARLES D. DRAKE, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased, has this day been made by Anna P. Westcott, named in the will of said deceased as Executrix.

All persons interested are hereby notified to appear in this court on the 8th day of May next, at eleven o'clock p. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star previous to the said day.

By the Court. A. B. HAGNER, Justice. L. P. WRIGHT, Register of Wills for the District of Columbia.
 15 No. 4921. Ad. Doc. 17. Wm. B. King, Proctor, 918 F St.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
 Holding a Special Term for Orphans' Court Business.

April 8th, 1892.

In the matter of the estate of JOHN M. WILL, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased, has this day been made by Marie A. Hermansdoerfer.

All persons interested are hereby notified to appear in this court on Friday, the 6th day of May next, at one o'clock p. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER and Washington Post previous to the said day.

By the Court. A. B. HAGNER, Justice. L. P. WRIGHT, Register of Wills for the District of Columbia.
 15 Ad. Doc. 17. S. J. Block, Proctor.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

Frank Libby et al. v. Equity. No. 18,714.
Benjamin Frank et al.

It appearing to the court that the subpoena issued against the defendant, BENJAMIN FRANK, has been returned not to be found, it is, this 6th day of April, A. D. 1892, ordered that said defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise this cause will be proceeded with as in case of default.

Provided a copy of this order be published in the Washington Law Reporter for the space of three weeks by successive weekly insertions in said paper.

The object of this suit is to enforce the mechan'sc's liens set out in the bill upon part of lot 5, in square 426, in the city of Washington, D. C.

A. B. HAGNER.
A true copy. Test: J. R. Young, Clerk,
15 By M. A. Clancy, Asst. Clerk.
[Filed April 6, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

William Colbert et al. v. Equity. No. 18,769.
Annie Burke et al.

It is ordered, this 6th day of April, A. D. 1892, that the defendants, JOHN RAEDY, TEENIE B. RAEDY, MICHAEL RAEDY and ANNIE M. RAEDY, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise this cause will be proceeded with as in case of default.

Provided a copy of this order be published in the Washington Law Reporter for the space of three weeks, by successive weekly insertions in said paper, before said day.

The object of this suit is to obtain a sale for the purpose of partition of sublot 22, in square 890, Washington, D. C.

A. B. HAGNER.
A true copy. Test: J. R. Young, Clerk.
15 By M. A. Clancy, Asst. Clerk.
[Filed April 6, 1891. J. R. Young, Clerk.]

THIRD INSERTION.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

Holding a Special Term for Orphans' Court Business.

April 1st, 1892.

In the matter of the Estate of THOMAS A. MITCHELL, late of Washington, D. C., deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration c. t. a. on the Estate of the said deceased, has this day been made by Edwin B. Hay.

All persons interested are hereby notified to appear in this Court on Friday, the 29th day of April next, at one o'clock p. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration c. t. a. on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Washington Post previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
14 No. 4907. Ad. Doc. 17.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 5th day of April, 1892.

James H. Williams v. Minnie E. Williams. No. 18,715. Eq. Docket 83.

On motion of the plaintiff, by Mr. Campbell Carrington, his solicitor, it is ordered that the defendant, MINNIE E. WILLIAMS, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for an absolute divorce upon the ground of wilful desertion and abandonment by the party complained of against the party complaining for the full uninterrupted space of two years before the beginning of this suit.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
14 By M. A. Clancy, Asst. Clerk.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of LOUIS W. SINSABAUGH, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 29th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of March, 1892.

SARAH S. SINSABAUGH,
14 John Ridout, Proctor. 1747 Q St., n. w.

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters of Administration on the personal estate of CELIA HOFFA, late of the District of Columbia, deceased.

All persons having claims against the said deceased, are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 31st day of March, 1892.

FRANK HOFFA,
409 7th St., n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

April 2, 1892.

In the case of John M. Langston, Administrator of SARA K. FIDLER, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 3rd day of April, A. D. 1892, at one o'clock p. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter, previous to the said day.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
14 No. 2727. Ad. Doc. 13.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

April 1, 1892.

In the matter of the Estate of JAMES ANDERSON late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Charles Wells.

All persons interested are hereby notified to appear in this Court on Friday, the 29th day of April next, at one o'clock p. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
14 Frank T. Browning, Proctor.

This is to Give Notice

That the subscriber, of Westborough, Mass., has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters of Administration on the personal estate of WILLIAM F. HOLTON, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day of April, 1892.

RUSSELL F. HOLTON,
Care of H. M. Baker, 1411 F St., n. w.
14 Henry M. Baker, Proctor.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of WILLIAM COPPINGER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of March, 1892.

MARTHA A. M. COPPINGER,
14 Reginald Fendall, Proctor. 226 E St., n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 1st day of April, 1892.

Petition of Thomas A. Ryan for } No. 18,789. Eq. Doc. 33.
leave to change his name.

On motion of the petitioner, by Mr. E. M. Hewlett, his solicitor, it is ordered that notice of the filing of this petition be printed in the Washington Law Reporter and in The Evening Star, once a week for each of three consecutive weeks, before the 1st day of May, 1892.

The object of this petition is for leave to the petitioner to change his name from Thomas A. Ryan to Frank A. Carter.

By the Court. A. B. HAGNER, Justice.

True copy. Test: J. R. Young, Clerk.

14 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 30th day of March, 1892.

Katie F. Christine } v. No. 18,280. Eq. Docket 32.

Albert B. Christine. On motion of the plaintiff, by Mr. A. B. Williams, her solicitor, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a decree of divorce from the bond of marriage with the defendant on the ground of desertion.

By the Court. A. B. HAGNER, Justice, &c.

True copy. Test: J. R. Young, Clerk, &c.

14 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

Holding a Special Term for Orphans' Court Business.

In the matter of the Estate of HARVEY B. BESTOR, late of the District of Columbia, deceased.

Application for the probate of the last Will and Testament of the said deceased, bearing date December 25, 1891, filed with the Register of Wills for this District and now exhibited to the Court, has been made by Henrietta M. Fowler, a sister of said deceased, and the executrix named in his Will.

All persons are this 1st day of April, 1892, hereby notified to appear in this court on Friday, the 29th day of the present month of April, at 1 o'clock p. m., to show cause why the said Will should not be admitted to probate and record.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day, or personal notice be served upon the absent heir before said day.

By the Court. A. B. HAGNER, Justice.

Test: L. P. WRIGHT.

Register of Wills for the District of Columbia.
14 No. 4795. Ad. Doc. 17. Edwards & Barnard, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Sitting as an Orphans' Court.

In the matter of the application of Charles N. Pomeroy for the removal of Willis H. Reynolds as Administrator of the estate of CHARLES POMEROY, deceased.

Upon consideration of the petition of Charles N. Pomeroy, for the removal of Willis H. Reynolds as administrator of the estate of Charles Pomeroy, deceased, it is this 1st day of April, 1892, ordered, that the said Willis H. Reynolds, Administrator as aforesaid, show cause on or before the 6th day of May next, why he should not be removed as such administrator for failure to file an inventory as required by law.

Provided that a copy of this order be published once a week for three weeks in the Washington Law Reporter and the Washington Post before said day.

A. B. HAGNER.

A True Copy. Test: L. P. WRIGHT,
14 Register of Wills, D. C.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of JAMES H. WHITE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 26th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of March, 1892.

A. E. L. KEESE,
14 No. 416 5th St., Columbia Law Building.

This is to Give Notice

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters of Administration c. t. a. on the personal estate of BENJAMIN COOLEY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 1st day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under their hands this 1st day of April, 1892.

THE WASHINGTON LOAN & TRUST CO.
14 John B. Larmer, Proctor. By W. B. Robison, Sec'y.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

March 30th, 1892.

In the case of Benjamin P. Snyder, Executor of WILLIAM N. WATERES, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 29th day of April, A. D. 1892, at one o'clock p. m. for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star previous to the said day.

Test: L. P. WRIGHT,
14 R. Ross Perry, Proctor. Register of Wills for the District of Columbia. No. 3882. Ad. Doc. 15.

This is to Give Notice

That the subscriber, of Philadelphia, Penna., has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of HENRY SHARPLESS, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 4th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of April, 1892.

PHEBE E. SHARPLESS,
14 Gordon & Gordon, Proctors. 1528 T St., n. w.

This is to Give Notice

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters Testamentary on the personal estate of MARTIN L. HIGGINS, late of the District of Columbia deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscribers, on or before the 4th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 4th day of April, 1892.

NATHANIEL FREEMAN,
SAMUEL WALLACE,
114 D St., n. w., City.

14

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WASHINGTON, D. C., - - - APRIL 28, 1892

Supreme Court of the District of Columbia. IN GENERAL TERM.

EX PARTE WILLARD S. NORVELL.

1. The Supreme Court of the District of Columbia and the Circuit Courts (sitting in the States), are equally courts of the United States.
2. Though the applications of judicial power by these courts differ, and the power is drawn from different provisions of the Constitution, both are courts which exercise judicial power belonging to the United States, and are therefore alike courts of the United States.
3. If there were any doubts whether it was the intention of Congress that Section 1042, of the Revised Statutes of the United States, should apply directly to all of the courts of the United States, it was made applicable to this court by Sec. 34, Act of Feb. 21, 1871, Ch. 62 (Sec. 28 Rev. Stat. D. C.), which declares that all laws of the United States not locally inapplicable, shall have the same force and effect within this District as elsewhere in the United States.

No. 225. Decided February 8, 1892.

CHIEF JUSTICE BINGHAM and Justices COX and JAMES sitting.

CERTIORARI to U. S. Commissioners.

Mr. GEO. K. FRENCH for Petitioner.

U. S. DISTRICT ATTORNEY, contra.

Mr. Justice JAMES delivered the opinion of the Court:

This is a writ of certiorari, issued by the Criminal Court to Clarence A Brandenburg, United States Commissioner, at the instance of the District Attorney of the United States for this District, and is certified to be heard here in the first instance.

It appears that one Willard S. Norvell was, on the 12th day of December, 1891, convicted in the Criminal Court on plea of "guilty" to an indictment for embezzling moneys of the United States, and sentenced to pay a fine of \$500 and to be imprisoned in the jail of this District "until said fine is paid." The convict was thereupon committed, and having remained in prison under that sentence for a period of thirty-five

days filed an application before Commissioner Brandenburg for his discharge, under section 1042 of the Revised Statutes of the United States. That section was taken from an Act passed June 1, 1872, 17 Stat., 198, and is in the following words:

"When a poor convict, sentenced by any court of the United States to pay a fine, or fine and cost, whether with or without imprisonment, has been confined in prison thirty days, solely for the non-payment of such fine, or fine and cost, he may make application in writing to any Commissioner of the United States court in the district where he is imprisoned, setting forth his inability to pay such fine, or fine and cost, and, after notice to the District Attorney of the United States, the Commissioner shall proceed to hear and determine the matter, and if, on examination, it shall appear to him that such convict is unable to pay such fine, or fine and cost, and that he has not any property exceeding twenty dollars in value, except such as is by law exempt from being taken on execution for debt, the Commissioner shall administer to him the following oath: 'I do solemnly swear that I have not any property, real or personal, to the amount of \$20, except such as is by law exempt from being taken on civil precept for debt by the laws of [state where oath is administered]; and that I have no property in any way conveyed or concealed, or in any way disposed of, for my use or benefit, So help me God.' And thereupon such convict shall be discharged, the Commissioner giving to the jailor, or keeper of the jail, a certificate setting forth the facts."

Before the time set for the hearing of this application this writ was issued commanding the Commissioner to return his proceedings in the premises to the Criminal Court. The matter being certified to be heard here in the first instance, a motion is now filed that it be remanded to the Commissioner, on the ground that he has full jurisdiction thereof.

The question to be considered by us is, whether the provision under which he claims to act applies to convicts of this court.

The words of the statute are: "When a poor convict, sentenced by *any court of the United States*," etc. That these words are descriptive of this court was conclusively determined in *Embrey v. Palmer*, 107 U. S., 3 (9, 10). That was a writ of error to a State court, and the Supreme Court considered first the question of its own jurisdiction. Mr. Justice Mathews said: "The jurisdiction

of the court invoked by this writ of error is conferred by section 709 Rev. Stat. It being a case in which a title or right is claimed under an authority exercised under the United States, and the decision of the State court being in denial of the right so asserted. It was decided in *Dupassey v. Rochereau*, 21 Wall., 130, that such a question is undoubtedly raised whenever "a State court refuses to give effect to the judgment of a court of the United States rendered upon the point in dispute, and with jurisdiction of the case and of the parties." The judgment which is the subject matter of the litigation is that of the Supreme Court of the District of Columbia, which is a court of the United States.

It is to be observed that by this reference to the rule as started in 21 Wallace, where the judgment whose effect was denied was that of a circuit court, the Supreme Court held that the words "Court of the United States" applied equally to this court and to the circuit courts of the United States.

In speaking of section 905, Rev. Stat., the court further said: "So far as this statutory provision relates to the effect to be given to the judicial proceedings of the States, it is founded on Art. 4, Sec. 1, of the Constitution, which, however, does not extend to the other cases covered by the statute. The power to prescribe what effect shall be given to the judicial proceedings of the courts of the United States is conferred by other provisions of the Constitution, such as those which declare the extent of the judicial power of the United States, which authorize all legislation necessary and proper for executing the powers vested by the Constitution in the Government of the United States or in any department or officer thereof, and which declare the supremacy of the authority of the National Government within the limits of the Constitution. As part of its general authority, the power to give effect to the judgments of its courts is co-extensive with its jurisdiction. That the Supreme Court of the District of Columbia is a court of the United States, results from the right of exclusive legislation over the District which the Constitution gives to Congress."

It is impossible to affirm more distinctly that this court and the circuit courts are equally courts of the United States. The principle suggested by the language of the Supreme Court in this case is that the latter are the instrumentalities by which the United States exercises in the States the

judicial power belonging to its limited sovereignty therein, and that the former is the instrumentality by which it exercises the judicial power belonging to its exclusive sovereignty. Though the applications of judicial power by these courts differ, and the power is drawn from different provisions of the Constitution, both are courts which exercise judicial power belonging to the United States, and are therefore alike courts of the United States.

But although the term "court of the United States" is *applicable* to both, it is a question of intention whether it is actually so *applied* by the legislature in any particular statute.

The statute from which this section was taken contained sixteen sections. Some of these plainly related to proceedings in the circuit and district courts; but others related to matters which in their nature are equally incident to proceedings in this District and in the Territories. In such cases, and especially when the provision related rather to the rights and liabilities of parties than to the mere mode of proceeding, we have always held that the statute was intended by the legislature to apply to all the courts of the United States, and therefore applied here. On that principle we have held that section 2 of the Act of June 8, 1872, Ch. 333, (Sec. 819 Rev. Stat.,) relating to peremptory challenges of jurors; and section 4 of the Act of March 3, 1835, Ch. 40 (Sec. 1032 Rev. Stat.,) relating to prisoners standing mute, and section 29 of the Act of April 30, 1790, Ch. 9 (Sects. 1033 and 1034 Rev. Stat.) relating to the delivery of a list of the jury and witnesses, and process to compel the attendance of witnesses, in capital cases, were necessarily intended to apply to those subjects in this District. So, too, we have applied two sections of the very statute now under consideration; namely, section 8 (1025 Rev. Stat.) relating to defects in indictments in matters of form, and section 9 (1035 Rev. Stat.) which authorizes a conviction of any offense necessarily included in that with which the defendant is charged in the indictment.

But if there were any doubts whether it was the intention of Congress that the provision in question should apply directly to all of the courts of the United States, we suppose that it was made applicable by section 34 of the Act of February 21, 1871, Ch. 62 (Sec. 93 Rev. Stat. Dist. Col.) which declares that all laws of the United States not locally inapplicable shall have the same

force and effect within this District as elsewhere in the United States.

Clearly there is nothing in this provision relating to poor convicts which makes it locally inapplicable to convicts of this court. The statute declares a general principle that one who cannot, by reason of poverty, pay a fine, shall not be held in custody indefinitely in order to enforce its payment, and that principle has no local limitation.

This case is therefore remanded to the Criminal Court for further proceedings in accordance with this provision.

Supreme Court of the United States.

Decided April 11, 1892.

[ABSTRACT.]

Belford, Clarke & Company, Michael A. Donohue, and William P. Henneberry, appellants, v. Charles Scribner. Appeal from the Circuit Court of the United States for the Northern District of Illinois.

Mr. Justice BLATCHFORD delivered the opinion of the court.

Bill in equity praying for a perpetual injunction to restrain the defendants (the appellants) from printing, publishing, binding, selling, or exposing for sale, any copies of a piratical book alleged to have been copied largely from a book of which the complainant (Scribner) was the owner of the copyright, and for an account and payment of the profits of sales of it.

Decree by the Circuit Court as prayed.

Held, That if exceptions were taken by the defendants to the Master's report, it was their duty as appellants to have the exceptions brought into this court as part of the record.

That the Circuit Court correctly decided that, as the proof showed that the authoress (a married woman) from time to time settled with the owners of the copyright (the complainant) for her royalties, the court would presume that her legal title as the author of the books was in some due and proper manner conveyed to and vested in the person who secured the copyright thereof; and that acquiescence for many years, by all the parties, in the claim of proprietorship in the copyright, was enough to answer the defendant's suggestion of the husband's possible marital interest in his wife's earnings.

That the opinion of the circuit court further correctly said :

"It is certain that, if there is any ownership in this work by copyright at all, it is in the complainant, in whose name the copy-

right was taken and now stands, so far as is shown by the proof in this case. If the law of the domicile of Mrs. Terhune entitles her husband to any part of her earnings, that is a matter to be settled between her husband and the complainant, and which the defendants cannot interpose as a defense to a trespass upon the complainant's property rights in this copyrighted book."

That this court is of opinion that the proofs show that the copyright was secured in accordance with law by the complainant, and that he owns such copyright.

That the statute was substantially complied with in depositing two copies of the book with the Librarian of Congress one day before its publication.

That the certificate of the Librarian of Congress that two copies of the book were received by him, etc., was competent evidence.

That under the copyright law (Rev. Stat., Sec. 4964) both the printer and the publisher are equally liable to the owner of the copyright for an infringement.

That if portions of the copyrighted work are so intermingled with the piratical work that they cannot be distinguished from it, the entire profits realized by the defendants will be given to the plaintiff.

Decree affirmed.

Book Review.

SKILL IN TRIALS: Containing a Variety of Civil and Criminal Cases won by the Art of Advocates; with some of the Skill of Webster, Choate, Beach, Butler, Curtis, Davis, Fountain, and others, given in sketches of their work and trial stories, with New Selections of Western Eloquence. By J. W. DONOVAN, Author of "Modern Jury Trials," "Trial Practice," "Tact in Court," etc. Rochester, N. Y.: Williamson Law Book Company. 1891.

This is a small book, containing 173 pages, nicely printed, bound in law sheep; price \$1.00. It is made up of many amusing, entertaining, and instructive stories, relating to the methods and practice of the eminent members of the profession whose names are given and others; also some important suggestions. The book is well worth its price.

If I am Sophocles, I am not mad ; and if I am mad, I am not Sophocles. —Plumptre.

Law Blanks at the Law Reporter, 503 E.

Supreme Court of the District of Columbia.
IN GENERAL TERM.

ISAAC S. LYON

v.

THE DISTRICT OF COLUMBIA.

At Law. No. 24,777. Decided March 28, 1892.

CHIEF JUSTICE BINGHAM and Justices Cox and JAMES sitting.

1. The effect of the ordinance of the City of Washington passed November 2, 1869, providing for levying a special tax on all tracts "bordering on the line of the improvement," and that the tax should be assessed and collected according to the provisions of the Act of October 12, 1865, was to charge the municipality, not with a direct indebtedness for the work done under the ordinance, but with a duty to work out a payment therefor, by seeing to it that the cost should be charged as a lien upon adjoining lots, and by enforcing this lien, etc.
2. By the operation of certain provisions of the Act of Congress of February 2, 1871, Sec. 91 and Secs. 94-96, Rev. Stat. D. C., the District became invested with authority, and was charged with the duty, to secure such liens and collect and pay over to the contractor such taxes, in payment for work done under an ordinance of the city.
3. Where a municipality neglects to perform its duty to collect the tax which had been provided as the means of paying for the work done at its request, it becomes chargeable directly with the indebtedness.
4. If the resource of payment out of the special tax could have been secured by the District, and was lost by its omission, a duty to pay the contractor would fairly belong to the District, and an issue of certificates of indebtedness to him would not be a void act.
5. The District is liable for the amount of such certificates.

Mr. J. G. BIGELOW for plaintiff.

Messrs. HAZLETON and THOMAS for defendants.

— Mr. Justice JAMES delivered the opinion of the Court:

This is substantially an action to recover from the District the value of certain certificates of indebtedness received by it from the plaintiff as purchaser of certain lots at what proved to be an illegal and void sale thereof for taxes.

The declaration avers that the collector of taxes advertised among other property lots 1 to 12 in square 156 for sale at public auction on October 5, 1881, for non-payment of certain taxes assessed and in arrears thereon, and on that day sold said lots to plaintiff for \$4,082.70, and, upon payment of the purchase money by plaintiff, executed and delivered to him a certificate of tax sale for each one of said lots; that said sale was not made according to law and was void, and that plaintiff has applied to defendant to refund the money so paid on account of said purchase, that defendant has refused so to refund, and has thereby become indebted to plaintiff in the sum stated.

Defendant's plea, admitting the advertisement and sale, states that the collector received from

the plaintiff, in payment for said lots, certain corporation stock which had been issued without authority of law, and transmitted the same to the District auditor, who cancelled it and forwarded it to the Treasurer of the United States; that subsequently it was discovered that the advertisement and sale of said lots for these taxes had been enjoined, and that the collector of taxes had advertised and sold the same through mistake, notwithstanding said injunction, and had, upon discovering such mistake, declared the sale null and void; and that plaintiff purchased with knowledge of said injunction. Issue was joined, and the case was heard upon the following stipulation as to facts:

STIPULATION OF FACTS.

It is hereby stipulated and agreed by and between the respective parties hereto, that the above entitled cause may be tried by the court without jury, upon the facts contained in the following statement, viz :

1. Henry Birch, the assignor of plaintiff, was a practical paver, and as such he set the curbstones and paved the footway and gutter (among other places) in front of lots 1 to 12, inclusive, in square 156 under a valid contract executed in 1870, with the Corporation of Washington.

2. The work was done in a good and workmanlike manner and under the supervision provided by law, and was at its completion duly measured and accepted by the Corporation of Washington through its authorized officers.

3. The work was completed on or about November 17, 1870, and its cost to be paid to the said Birch, amounted to the sum of \$2,054.10—no part of which has ever been collected or paid.

4. Upon the completion of the work, it was the duty of Wm. Forsythe, then superintendent and inspector of paving of footways, etc., under the Act of June 10, 1867, to make all assessments on lots bordering on any street which shall have been paved (Sec. 6), and without delay after the completion of a pavement, to deposit with the Register a statement exhibiting the cost of the work in front of each lot, and the amount of tax to be paid by each lot owner; and the Register in turn was to place in the hands of the Collector of Taxes a list of the persons chargeable with such tax; and he in turn was to give notice in writing to the respective lot owners of the amount of tax due by them. Act of May 23, 1853, Sec. 6.

5. The said Wm. Forsythe neglected to assess the property as required by law, in that he withheld the statement of the cost of the work from the Register, and the assessment from record for twelve months after the completion of the

work, or until November, 1871—this at the sole request and procurement of the owner of the said lots, whereby he, the owner, was enabled to sell, and did sell said lots without any record notice of said assessment to the purchaser.

6. Between the time the work was completed and its attempted assessment against said lots, the Corporation of Washington had been succeeded by the Government of the District of Columbia and the offices under the Corporation of Washington had been abolished, and the said Forsythe was without authority to make any assessment against said lots; yet, on or about November, 1871, the records were erased and altered, whereby an assessment against said lots was interpolated over and above the signatures already made, of the Mayor, Ward Commissioner, and other officers of the Corporation, presumably to make it appear that they had approved the same, when as a matter of fact they had not.

7. On the 9th day of March, 1872, the District of Columbia, notwithstanding this action of Forsythe, issued and delivered to said Henry Birch four certificates of indebtedness against said lots for the cost of said work, signed by the Governor and Register, and said Birch sold and transferred the same to plaintiff for value before maturity—true copies of said certificates are attached hereto.

8. In June, 1874, these said lots were (among others) advertised to be sold by the Collector of Taxes for non-payment of said assessment or certificates; whereupon, through proper proceedings had, the Supreme Court of the District of Columbia, by its order passed in cause James M. Latta v. The District of Columbia, John F. Cook, Collector of Taxes, and Theodore Scheckles, No. 4,450, Equity, enjoined the defendant from selling said lots through non-payment of said assessment or certificates, which said order has never been set aside, annulled or reversed, but is still in full force and effect.

9. Neither said Henry Birch nor this plaintiff were made parties to said cause, and neither of them had any knowledge of the order passed therein.

10. The Collector of Taxes, upon the service of the restraining order issued in said cause made no entry or memorandum of the same against said lots 1 to 12, in square 156, but by mistake entered the same in his office as applying to the same numbered lots in square 256.

11. On October 5, 1881, the Collector of Taxes, notwithstanding said injunction, again advertised said lots for sale, and did sell the same for the non-payment of the said assessment or cer-

tificates, and plaintiff became the purchaser of each of said lots, and there was then issued to him upon the surrender by him of said certificates of indebtedness (which have been cancelled) and the payment of three dollars in money, the twelve certificates of tax sale, true copies of which are attached hereto.

12. At the time of said sale and purchase, viz: October 5, 1881, this plaintiff had no knowledge whatever of the restraining order passed in said cause No. 4,450, or any of the proceedings therein, and neither he nor his assignor, Birch, were aware of any invalid proceedings connected with said assessment, and said purchase was *involuntary* on the part of plaintiff and made to protect his interest in said certificates of indebtedness and save the same from sacrifice.

13. The certificates of indebtedness thus surrendered by this plaintiff were computed and accepted as valid by the District of Columbia at said sale, at and for the sum of \$4,079.70, which, with \$3.00 paid in cash, made \$4,082.70 as the purchase price paid for said lots on October 5, 1881, by this plaintiff.

14. The Supreme Court of the District of Columbia in February, 1885, by a decree passed in Equity cause John B. Alley v. Isaac S. Lyon, No. 8,494, set aside this assessment and adjudged that it "did not create or constitute any lien upon the premises," also that the sale of said lots by the Collector of Taxes made on October 5, 1881, was made "contrary to law" and that the certificates of sale "were illegal and did not give the purchaser of said premises, at said sale, any right, title, estate or interest in law or in equity to the said premises, or any part thereof," and the present plaintiff was "perpetually restrained and enjoined from using, employing or setting up, or in any way whatsoever, the said assessment lien certificate or certificates of sale as legal and valid, and from claiming any right, title or interest thereunder, or by virtue thereof, to the whole or any part of said lots," 3 Mackey, 456, which decree was affirmed by the Supreme Court of the United States, 130 U. S., 177.

15. The assessment was illegally levied, and the collector of taxes was without authority and jurisdiction to sell, and said sale was not made according to law, and void.

16. In 1882, the District of Columbia, upon the application of the then owner of said lots, paid to him the sum of \$772.32 for the appropriation by it of the material put there by said Birch under his said contract.

17. Plaintiff first learned of the invalid

proceedings connected with said assessment and sale in the early part of 1882, and at once made application to defendant for a return of the certificates of indebtedness and the money accepted by the collector of taxes as the purchase price of said lots (tending in return the certificates of tax sale), but said application was refused.

18. All Acts of Congress and acts of the late Corporation of Washington having any bearing hereon, are to be considered as in evidence, and may be read at the trial.

19. And should the court be of opinion that plaintiff is legally entitled to recover it may give judgment in his favor for the amount paid by him at the sale, viz., \$4,082.70, with interest thereon from the 5th day of October, 1881.

We are authorized, by consent of counsel for both parties, to add, as a part of this stipulation, that the lots in question were sold on Oct. 2, 1871, by the party who owned them when the special improvement was made.

The work done in making the special improvement in question was done under an ordinance of the city of Washington passed November, 2, 1869. That act provided for levying a special tax on all lots "bordering on the line of the improvement," and that the tax should be assessed and collected according to the provisions of the Act of October 12, 1865. This act extended the acts of May 23 and 24, 1853, and provided that the cost and expenses of every local improvement thereafter made, unless otherwise provided for, should "levied, assessed, collected and paid, and the payment thereof enforced" as provided in the said acts of 1853.

Briefly stated, the effect of these acts was to charge the municipality, not with a direct indebtedness for the work done under its ordinance, but with a duty to work out a payment therefor by seeing to it that the cost should be charged as a lien upon adjoining lots, and by enforcing this lien and collecting the special tax from the lot owners. By the operation of certain provisions of the Act of Congress of February 21, 1871, commonly known as the Organic Act, Section 91 and Sections 94-98, Rev. Stat. of District of Columbia, the District became invested with authority, and was charged with the duty, to secure such liens and collect and pay over to the contractor such taxes, in payment for work done under an ordinance of the city of Washington. This power could have been exercised and this duty could have been performed in the present case at any time before the 2d day of October, 1871, when it was cut off by the sale

of the lots in question to an innocent purchaser.

Numerous authorities show that where a municipality omits to perform its duty to collect the tax which had been provided as the means of paying for the work done at its request, it becomes chargeable directly with the indebtedness. See *Morgan v. The City of Dubuque*, 28 Iowa, 575; *Kearney v. City of Covington*, 1 Metc., Ky., 339; *Cummings v. Mayor, etc., of Brooklyn*, 11 Paige, Ch. 596; *Fisher v. City of St. Louis*, 44 Mo., 482; *Argenti v. City of San Francisco*, 16 Cal., 281; *Beard v. City of Brooklyn*, 31 Barb., 142. The principle on which these cases were decided seems to be, not that the municipality is held liable for neglect of duty, but that its liability arises by fair construction of contract. To this liability the District succeeded.

If the resource of payment out of the special tax could have been secured by the District, and was lost by its omission, a duty to pay the contractor would fairly belong to the District, and an issue of certificates of indebtedness to him would not be a void act. All such certificates are by law negotiable, and in this particular case they appear to have been assigned for value to an innocent purchaser. Neither he nor the authorities of the District appear to have been informed of the injunction which forbade a sale of the lots, as a means of satisfying them. The plaintiff therefore acted in good faith in making the purchase at the tax sale.

It is insisted, however, on the part of the District, that, in making the sale of the twelve lots to the plaintiff, the collector acted as his agent for the collection of his certificates of indebtedness, and was not acting for the District of Columbia; and that if the agent's act was invalid, his principal, the plaintiff, must bear the loss. We do not think this proposition is either true or to the point. In collecting taxes—although it be done for the purpose of providing means to pay a particular person—the authorities exercise their own public functions, and cannot be regarded as private agents. In the next place, whatever might be the capacity in which the collector acted, the District received and has retained the proceeds of the transaction. In that respect it treated the sale as made on its account.

The final question, then, is, what is the remedy?

If these certificates were valid they represented, and were received as constituting the value named in the stipulation. As between the parties they were purchase money. The sale gave nothing to the plaintiff, but the Dis-

trict retains, and has disabled itself to return, his certificates of indebtedness. We think it is liable for the amount of these certificates.

The judgment will therefore be for the amount stated in the stipulation, with interest.

Supreme Court of the United States.

THE J. S. KEATOR LUMBER COMPANY,

PLAINTIFF IN ERROR,

v.

BENJAMIN F. THOMPSON AND HOMER ROOT.

1. No point was directly made in the court below, either before or after judgment, that the plaintiffs were limited in their recovery to the sum named in their affidavit filed with their declaration, under the statute of Illinois.
2. An objection, made for the first time in this court, that the damages awarded to the plaintiffs are in excess of the amount claimed in their affidavit, ought not to be entertained.

IN ERROR to the Circuit Court of the United States for the Northern District of Illinois.

Benjamin F. Thompson and Homer Root brought this action of assumpson against the J. S. Keator Lumber Company for a balance alleged to be due them for cutting and hauling saw-logs, etc. The two main grounds of dispute were: (1) Whether the price for the work was limited by the contract in question to \$3 per thousand feet of saw-logs cut and delivered into the boom limits of the Black River, Wisconsin, without extra charge, or whether the plaintiffs, in addition to the above price, were entitled to be paid for the driving or delivery of the logs into said boom limits; (2) whether the plaintiffs had not overcharged the defendant in the scaling and measurement of the logs.

With the declaration was filed an affidavit by plaintiffs under the statute of Illinois, providing that "if the plaintiff in any suit upon a contract expressed or implied for the payment of money, shall file with his declaration an affidavit, showing the nature of his demand and the amount due him from the defendant, after allowing to the defendant all his just credits, deductions, and set-offs, if any, he shall be entitled to judgment as in case of default, unless the defendant, or his agent or attorney, if the defendant is a resident of the county in which the suit is brought, shall file with his plea an affidavit stating that he verily believes he has a good defense to said suit upon the merits to the whole or a portion of the plaintiff's demand, and if a portion, specifying the amount, (according to the best of his knowledge and belief,) etc." 2

Starr & Curtis' Stat. Ill., 1801, par. 37, Sec. 36.

The defendant filed a plea in abatement, and, subsequently, pleas of non-assumpson and set-off; the latter being for an amount exceeding that sued for by the plaintiff. With these pleas the defendant filed an affidavit of merits in conformity with the above statute.

The parties, by written stipulation, waived a jury and agreed that the case be set for trial any day not earlier than March 28th, 1888. Under this stipulation the plaintiffs had it set for trial on the day just named. The defendant on that day, requested a postponement of the trial until the arrival of its Wisconsin counsel, who had had sole charge of the preparation of the defense, and also because of the absence of its principal witness. The court ruled that unless the defendant showed legal grounds for a continuance, the trial should proceed forthwith. The defendant then entered a motion for continuance based upon affidavit as to what the absent witness would state. The plaintiffs offering to admit upon the trial that the witness, if present, would testify as set forth in the affidavit, the court overruled the motion for continuance, and held that the trial must proceed forthwith. To this action of the court the defendant excepted. Thereupon, the trial was commenced on the 28th of March, 1888, in the absence of the defendant's Wisconsin counsel, who, however, arrived before the conclusion of the trial, which continued during the 29th and 30th of March. On the last named day, but before the trial was concluded, the plaintiffs, without notice to the defendant or its attorney, and without obtaining leave from the court filed with the clerk replications to the defendant's pleas.

On March 31, 1888, the court made a general finding of the issues for the plaintiffs, and assessed their damages at \$15,568.99, for which amount judgment was entered against the defendant. To this judgment the defendant excepted on the ground that it was excessive in amount.

Decided April 4, 1892.

Mr. Justice HARLAN delivered the opinion of the court:

The principal assignments of error have nothing of substance in them. When the plaintiffs agreed to admit upon the trial that the defendant's absent witness would testify as stated in the affidavit filed for a continuance of the case, and the court thereupon ruled that the trial should proceed, attention was not called to the fact that replications had not been filed to the

first and third pleas, and judgment was not asked upon those pleas for want of such replications. Nor did the defendant, before judgment, move for a new trial upon the ground that its first and third pleas were unanswered at the time the trial began. The filing of replications to those pleas, during the progress of the trial, and without leave of the court, was, of course, improper and irregular. But it must be presumed that the fact of their having been so filed was known to the defendant before the trial was concluded, or before the judgment was entered. Besides, the judgment was under the control of the court during the term; and if it had been made to appear that the defendant was unaware, prior to the entry of judgment, that replications to its first and third pleas were put on file during the progress of the trial, it may be that the court would have set aside the judgment. It appears only that the replications were not on file when the trial commenced, not that their being filed during its progress was unknown to the defendant before the trial was concluded. The defendant was bound to know, when the court ordered the parties to proceed with the trial, that replications had not been filed to its first and third pleas. It should then have asked for a rule upon the plaintiff to file replications. Its failure to do so was equivalent to consenting that the trial, so far as the pleadings were concerned, might be commenced. The objection that replications were not filed when the trial commenced, nor before judgment, with leave of the court, came too late after judgment was entered. In *Kelsey v. Lamb*, 21 Ill., 559, the Supreme Court of Illinois said: "If the defendant has filed his plea, and the other party fails to reply within the time required by the rules of the court, he has a right to judgment by default against the plaintiff, but until he obtains such default, the pleas cannot be considered as confessed by the plaintiff. It is the default which gives the right to consider and act upon the pleas as true. In this case no default was taken. When the parties submitted the case to trial by the court, without a jury by consent, it had the effect of submitting the case to trial on the pleadings, as if there were proper issues formed, and the court will hear evidence under all the pleas presenting a legal defence, precisely as if the allegations of such pleas had been formally traversed. This is the fair and reasonable construction to be given to such agreements. But it is otherwise, where the party is compelled to proceed to trial, without the issues being formed in the case. Then the act is not voluntary, and no such intendment can be made." The defendant

here was compelled to proceed with the trial, but no objection was made by it to a trial because the issues were not fully made up. See also *Bunker v. Green*, 48 Ill., 243; *Beesley v. Hamilton*, 50 Ill., 88; *Barnett v. Graff*, 52 Ill., 170.

It is objected that the damages awarded to the plaintiffs are excessive in that their affidavit, filed with the declaration, shows the amount claimed, as of August 16, 1887, when the action was commenced, was only \$13,943.23, whereas the judgment was \$15,568.99. Allowing interest upon the first named sum up to the date of the judgment, the damages given exceed the amount claimed in the plaintiffs' affidavit by more than \$1,000. But the *ad damnum* was \$20,000, and the bill of exceptions states that "the plaintiffs also introduced evidence tending to show that the amount now [then] due and owing from the defendant to the plaintiffs for the matters and causes of action aforesaid is \$15,568.99." It does not state what this evidence was, nor does it appear that the defendant objected to evidence showing an indebtedness on its part in excess of the sum claimed in the plaintiffs' affidavit. Besides, the affidavit, though no part of the declaration itself, was a statutory pleading, which might have been amended upon such a suggestion. *Haley v. Charnley*, 79 Ill., 592; *McKenzie v. Penfield*, 87 Ill., 83. The only purpose of the affidavit is to entitle a plaintiff to judgment as in case of default unless defendant shall file an affidavit of merits with his pleas, and in case of such default the plaintiff's affidavit may be taken as *prima facie* evidence of the amount due; but even this is discretionary with the court. *Kern v. Strasberger*, 71 Ill., 303. No point was directly made in the court below, either before or after judgment, that the plaintiffs were limited in their recovery to the sum named in their affidavit. An objection of that character, made for the first time in this court, ought not to be entertained.

No other questions presented by the record are of sufficient importance to be considered.

Judgment affirmed.

ESTOPPEL—RATIFICATION.—In an action on a note alleged to have been given by defendant firm the answer denied the making of the note, and alleged payment. Plaintiff's evidence showed that the note was given by one M., whom plaintiff claimed to be a member of the firm, and that the money was used by the firm. Defendants denied that he was a member, or authorised to give the note: *Held*, That it was error to charge that if the money was actually used by the firm, defendants were estopped to deny the authority of M. to borrow the money.

There can be no ratification by the firm of M's action without a knowledge on their part of such action.

Evidence that from the observation of witness of the part M. took in the firm's business he was a member thereof was incompetent. *Eggleston v. Mason (Iowa)*, 51 N. W. Rep., 1.

THE COURTS.

Supreme Court of the District of Columbia.

IN EQUITY.—New Suits.

April 5, 1892.

13840. M. O'Brien. Alleged lunatic. Upon petition Commissioners D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazleton.

13841. C. H. Hutton. Alleged lunatic. Upon petition Commissioners D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazleton.

13842. Elizabeth E. Lewis. Alleged lunatic. Upon petition Commissioners D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazleton.

13843. Jamie E. Nicholson v. James F. Nicholson. For divorce. Com. sol., C. Carrington.

13844. Independent Ice Co. v. W. & W. M. RR. Co. et al. Injunction. Com. sol., Samuel Maddox.

13845. Sophie V. Lurig v. Charles F. Lurig. For divorce. Com. sol., C. Carrington.

April 6.

13846. Wm. Dunmore. Alleged lunatic. Upon petition Commissioners D. C. De lunatico inquirendo.

13847. Samuel Smith. Alleged lunatic. Upon petition Commissioners D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazleton.

13848. Ann and Wm. H. Dunn, trustees, v. Mary A. Ashburn et al. For sale of lots 12 and 13, sq. 209, by trustees to be appointed. Com. sol., W. A. Cook.

April 7.

13849. Lillie Lapham v. William R. Lapham. For divorce. Com. sol., S. R. Bond.

April 8.

13850. Lucy Ray, alleged lunatic. Upon petition of Commissioners D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazleton.

13851. Annie Mayher, alleged lunatic. Upon petition of Commissioners D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazleton.

13852. Ella L. Casteman v. Mary A. McGraw et al. For partition by sale of lot 6, sq. 571. Com. sols., Birney & Birney.

April 9.

13853. Mary C. King v. C. J. Bright et al. To construe will. Com. sol., F. H. Mackey.

April 11.

13854. Wm. Stout et al. v. C. C. Lefler et al. Creditors' bill. To sell "Hotel Lincoln." Com. sol., F. T. Browning.

13855. Philah De Neale v. Helen Kyle et al. For partition by sale, part lot 26, sq. 995. Com. sols., Cole & Cole.

13856. Maggie Rhone v. Spencer Rhone. For divorce. Com. sol., C. Carrington.

13857. P. O'Donoghue et al. v. Catherine O'Donoghue. For partition by sale, lot 9, sq. 481. Com. sols., Gordon & Gordon.

13858. H. W. Garnett et al., executors, v. H. M. Bartlett et al. Com. sol., R. Hagner; Defts. sol., Mason N. Richardson.

13859. O. O. Wharton et al. v. Etta V. Chaplin et al. For partition by sale. Com. sols., J. K. McCommon and Jas. H. Hayden.

13860. Lillie Jackson, alleged lunatic. Upon petition of Commissioners D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazleton.

13861. C. Miller, alleged lunatic. Upon petition Commissioners D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazleton.

April 13.

13862. Martha Hampson v. Joseph H. Hampson. To sell infants' interest in real estate. Com. sol., S. R. Bond.

13863. Mary W. Ryan v. Robert L. Ryan. For divorce. Com. sol., H. B. Moulton.

April 13.

13864. Geo. R. Hulse v. Kate E. Hulse. For divorce. Com. sols., Padgett & Forrest.

April 14.

13865. Thos. J. Brown v. Florence Hull Brown. For divorce. Com. sol., C. Carrington.

13866. T. J. Mayer et al. v. H. F. Meyer et al. Creditors' Bill. Com. sols., Church & Stephens, Defts. sol., M. N. Richardson.

April 15.

13867. Charles H. Burgess et al. v. Sarah E. Proctor et al. Com. sol., J. Thos. Sothonor, Defts. sol., Wm. G. Johnson.

13868. Elizabeth C. Robey et al. v. Owen Robey et al. For partition. Com. sol., J. H. Adriaans.

April 16.

13869. Joseph Walshe, alleged lunatic. Upon petition of Commissioners, D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazleton.

13870. Alder Bradford, alleged lunatic. Upon petition of Commissioners, D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazleton.

13871. Wm. G. Talliaferro, alleged lunatic. Upon petition of Commissioners, D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazleton.

13872. Mary Margaret Desmond v. Daniel Desmond. For divorce. Com. sol., C. Carrington,

13873. Rufif Van Brunt v. Margaret E. Van Brunt. For divorce. Com. sol., C. A. Walter.

13874. Bartow L. Walker v. Oliver O. Spicer. To remove cloud from title. Com. sols., Leo Simmons and Franklin H. Mackey.

April 18.

13875. Asa Whitehead v. Samuel Hodgkins et al. For one sixth interest in certain land, etc. Com. sol., J. J. Darlington, Defts. sol., Samuel Hodgkins.

13876. Robert B. Benham, alleged lunatic. Upon petition of Anna M. Benham. De lunatico inquirendo. Com. sol., A. Rutherford.

April 21.

13878. Sallie Flynn v. August B. Flynn. For divorce. Com. sol., A. C. Richards.

13878. Lizzie Ellsworth v. William Ellsworth. For divorce. Com. sol., W. C. Martin.

April 22.

13879. James F. Branson, alleged lunatic. Upon petition of Commissioners, D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazleton.

April 23.

13880. Charles E. Elliott v. Susan L. Elliott. For divorce. Com. Sol., C. Carrington.

13881. Chas. King et al. v. J. J. Gavin. To enjoin Livery Stable in Sq. 313. Com. sol., Com. sols., Edwards & Barnard.

13882.

Legal Notices**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business.**

April 2, 1892.

In the case of John M. Langston, administrator of SARA K. FIDLER, deceased, the administrator aforesaid has, with the approval of the court, appointed Friday, the 3rd day of June, A. D. 1892, at one o'clock p. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court.

A. B. HAGNER, Justice.

Test:

L. P. WRIGHT,

Register of Wills for the District of Columbia.

18 No. 2727. Ad. Doc. 18.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business.**

Washington, D. C., April 30th, 1892.

In the matter of the estate of JAMES MALONEY, late of Washington City, District of Columbia, deceased.

Application for the probate of the last will and testament and for letters testamentary on the estate of the said deceased has this day been made by Lucius W. Snook.

All persons interested are hereby notified to appear in this court on Friday the 27th day of April next, at one o'clock p. m., to show cause why the said will should not be proved and admitted to probate and letters testamentary on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter, and New York Herald, previous to the said day.

By the Court.

A. B. HAGNER, Justice.

Test:

L. P. WRIGHT,

Register of Wills for the District of Columbia.

18 No. 4913. Ad. Doc. 17.

J. Carter Marbury, Proctor

SECOND INSERTION.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business.**

April 28th, 1892.

In the case of Chapin Brown, Ellen Brown and William H. Brown, administrators c. t. a. of ABSALOM BROWN, deceased, the administrators c. t. a. aforesaid has, with the approval of the court, appointed Friday, the 20th day of May, A. D. 1892, at one o'clock p. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the administrators c. t. a. will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Washington Post previous to the said day.

Test:

L. P. WRIGHT,

Register of Wills for the District of Columbia.

17 No. 4389. Ad. Doc. 16.

Chapin Brown, Proctor

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 28th day of April, 1892.

Doris Grufe, Plaintiff, vs. Nettie Ortenstein et al. Defendants. On motion of the plaintiff, by Mr. E. H. Thomas, her solicitor, it is ordered that the defendants, NETTIE ORTENSTEIN, HENRIETTA ROSENSTOCK, MAX MILLER, of London, HERMAN MILLER, TONI MILLER, JACOB MILLER, ALFRED MILLER and MAX MILLER of Chicago, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to substitute a trustee in the place of Nehemiah H. Miller, deceased, trustee named in deed of trust on lots 1, 2, 19 and 20, Square 980, Washington City, District of Columbia.

By the Court.

A. B. Hagner, Justice, &c.

True Copy. Test:

J. R. Young, Clerk, &c.

17

By M. A. Clancy, Asst. Clerk.

Filed April 26, 1892: J. R. Young, Clerk.

Legal Notices**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.**

April 22d, 1892.

In the matter of the estate of ZADOK WILLIAMS, late of the District of Columbia, deceased.

Application for the probate of the last will and testament and for letters testamentary on the estate of the said deceased, has this day been made by Rudolph Eichhorn.

All persons interested are hereby notified to appear in this court on Friday, the 20th day of May next, at one o'clock p. m., to show cause why the said will should not be proved and admitted to probate and letters testamentary on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star previous to the said day.

By the Court.

A. B. HAGNER, Justice.

Test:

L. P. WRIGHT,

Register of Wills for the District of Columbia.

17 No. 4905. Ad. D. 17.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of ELIZABETH THWAITES, late of the District of the Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 16th day April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of April, 1892.

THE WASHINGTON LOAN & TRUST CO.

17 John B. Larner, Proctor. By W. B. Robison, Sec'y.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.**

April 22d, 1892.

In the matter of the estate of ADELINE W. FAGUE, late of District of Columbia, deceased.

Application for the probate of the last will and testament of said deceased, has this day been made by Joseph R. Fague, husband, surviving.

All persons interested are hereby notified to appear in this court on Friday, the 20th day of May next, at one o'clock p. m., to show cause why the said will should not be proved and admitted to probate and record as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star previous to the said day.

By the Court.

A. B. HAGNER, Justice.

Test:

L. P. WRIGHT,

Register of Wills for the District of Columbia.

17 No. 4926. Ad. D. 17. A. A. Birney, Proctor.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 20th day of April, 1892.**

Charles W. James.

v.

No. 12,745. Eq. Docket 33.

Margaret J. James.

On motion of the plaintiff, by Mr. Howard P. Okie, his solicitor, it is ordered that the defendant cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce from the bond of marriage on the ground of adultery on the part of the defendant.

By the Court.

A. B. HAGNER, Justice, &c.

True copy. Test:

J. R. Young, Clerk, &c.

17 By L. P. Williams, Asst. Clerk.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of FEARNLEIGH L. MONTAGUE, otherwise known as ALMA WOODLEIGH, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 22d day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of April, 1892.

WILLIAM H. VEERHOFF,

1217 F St., n. w.

17 E. M. Cleary, Proctor.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

Holding an Equity Court the 22d day of April, 1892.

MARIE HEINE et al., COMPLAINANTS, vs. FREDERICK HEINE et al., DEFENDANTS.

No. 18,525. Equity Docket 38.

Ordered that the sale made and this day reported by Reginald Fendall, Trustee in this cause, be ratified and confirmed, unless cause to the contrary be shown on or before the 22d day of May, A. D., 1892; Provided a copy of this order be inserted in the Washington Law Reporter and the Washington Post, once in each of three successive weeks before said last named day.

Said trustee states in his report that he has sold at private sale the westerly of the two tracts of land in the county of Washington, D. C., which were conveyed to William Heine, deceased, by William Little and wife, by deed dated December 10, 1882, recorded among the land records of said District in Liber J. A. S. 226, folio 260 et seq., containing 11.494 acres of land, at and for the sum of \$21,561.25.

A true copy. Test: A. B. HAGNER.
17 By J. R. Young, Clerk.
By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Walter W. H. Robinson vs. Annie M. Watson, et al.

In Equity. No. 18,675. Doc. 38.

Charles H. Cragin and Randall Hagner, trustees appointed by decree in this cause to sell certain real estate therein mentioned, to wit, lots 63 and 64 in Cragin and others' recorded subdivision of lots in square 132 in the city of Washington, having reported to the Court that they had sold said real estate to William Mayse, who afterwards assigned and transferred his purchase to Samuel R. Bond, at and for the sum of \$31,995.50, it is by the Court, this 22d day of April, 1892, ordered that the sale so made to Samuel R. Bond be and the same is hereby ratified and confirmed, unless cause to the contrary be shown on or before the 22d day of May, 1892; Provided a copy of this order be published once a week for three successive weeks in the Washington Law Reporter, previous to the last-mentioned date.

A true copy. Test: A. B. HAGNER, Justice.
17 Filed April 28, 1892: R. R. Young, Clerk.
By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

William H. Nelson, vs. Ida E. Cole et al.

No. 13,765, Equity Doc.

William H. Sholes, the trustee herein, having reported to the court that he has sold to A. HEITMUELLER, the south fifteen feet of original lot No. 7 in square 904, in the City of Washington, District of Columbia, with improvements, for the sum of thirty-two hundred dollars, it is this 21st day of April, A. D., 1892, ordered that said sale be ratified and confirmed, unless cause be shown to the contrary on or before the 21st day of May, A. D. 1892.

Provided a copy of this order be published in the Washington Law Reporter, once a week for three successive weeks before said last mentioned date.

A. B. HAGNER.
A true copy. Test: J. R. Young, Clerk.
17 By M. A. CLANCY, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

The 21st day of April, 1892.

The Capitol Hill Brick Company vs. Galen E. Green et al.

No. 18,808. Eq. Docket 38.

On motion of the plaintiff, by Mr. W. H. Sholes, its solicitor, it is ordered that the defendant, THE SOUTHERN BUILDING AND LOAN ASSOCIATION, cause its appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to enforce Mechanic's lien on lot No. 22 in Galen E. Green's subdivision of part of the "Girl's Portion" in the District of Columbia.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
17 By M. A. Clancy, Asst. Clerk.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

Holding a Special Term for Orphans' Court Business.

April 22nd, 1892.

In the matter of the Estate of BERNARD VITAL DAELEN, late of Berlin, Germany, deceased.

Application for Ancillary Letters of Administration on the Estate of the said deceased, has this day been made by Octavius Knight, of Washington, D. C.

All persons interested are hereby notified to appear in this Court on Friday, the 27th day of May next, at 1 o'clock p. m., to show cause why Letters of Administration on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT.
17 Register of Wills for the District of Columbia.
H. S. Knight, Proctor

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

John W. Burke et al. complainants.

vs. In Equity, No. 12,693.

William A. Maury et al. defendants. On motion of the complainants, by Nathl. Wilson, Esquire, their solicitor, it is this twenty-sixth day of April, A. D. 1892, by the Court in equity sitting, ordered that the defendants RICHARD W. MAURY, ROBERT W. MAURY, ALLEN MAURY, ISABELLE MAURY, SARAH MAURY, PORTIEUX ROBINSON and ANNIE ROBINSON, his wife, JAMES L. MAURY, WILLIAM M. HILL, TEURS HILL, JAMES L. HILL, ISABELLE M. HILL, M. S. QUARLES, and NANNIE QUARLES, his wife, JOHN L. WHITE, WALKER HILL, RICHARD C. HILL, JANE RICHMOND, ANNIE PERRIN KEMP, and MAURY KEMP cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

It is further ordered that a copy of this order be published once a week for three successive weeks before the said rule-day in the Evening Star and in the Washington Law Reporter.

This suit has for its object the confirmation of the sale under the final decree in Equity cause No. 12,641, of part of lot "A" in square 462, in the city of Washington, District of Columbia.

A. B. HAGNER, Asso. Justice.
True copy. Test: J. R. Young, Clerk,
17 By M. A. Clancy, Asst. Clerk.
[Filed April 26, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

Mary Ann Bowen et al.

vs. No. 13,277, Equity Doc.

Benjamin L. Bowen. The trustee herein, Andrew B. Duvall, having reported the sale of the real estate in the proceedings mentioned for the sum of \$2,385, to Simon Oppenheimer, and the said purchases having complied with the terms of sale, according to the modifications thereof stated in said report, it is, by the Court, this 23d day of April, A. D. 1892, ordered that the said sale, upon modified terms aforesaid, be ratified and confirmed unless cause to the contrary be shown on or before the 23d of May, A. D. 1892.

Provided a copy of this order be published once a week for three successive weeks prior to the said date in the Washington Law Reporter.

A. B. HAGNER, Justice.
True copy. Test: J. R. Young, Clerk.
17 By M. A. Clancy, Asst. Clerk.
[Filed April 23, 1892. J. R. Young, Clerk.]

This is to Give Notice

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters Testamentary on the personal estate of MARTHA MOSS or MARTHA E. OWEN, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 26th day of April, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 26th day of April, 1892.

JAMES OWEN,
ANDREW F. TENLEY,
17 J. J. Waters, Proctor. 1004 Penna. Ave., n. w.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court Business, letters of administration c. t. a. on the personal estate of THOMAS P. BELL, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of April, 1892.

17 Jas. F. Hood, Proctor. WILLIAM MAYSE,
516 9th St., n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of LOUIS SCHMID, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 23d day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23d day of April, 1892.

17 Randall Hagner, Proctor. EDWARD S. SCHMID,
No. 712 12th St., n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court Business, letters of administration on the personal estate of JOSEPH DANIELS, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23d day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23d day of April, 1892.

17 ARA. M. DANIELS,
1900 14th St., n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of ALBERT BOULDIN, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23d day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23d day of April, 1892.

17 W. K. Duhamel, Proctor.
GEORGE R. WILLIAMS,
Lincolnsville, Bennings P. O. D. C.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business,
April 22, 1892.

In the matter of the estate of CARL A. STOBESAND late of Georgetown, D. C., deceased.

Application for the probate of the last will and testament and for letters testamentary on the estate of the said deceased, has this day been made by Elise Stobesand.

All persons interested are hereby notified to appear in this court on Friday, the 20th day of May next, at one o'clock, p. m., to show cause why the said Will should not be proved and admitted to probate and letters testamentary on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: L. P. WRIGHT, Register of Wills for the District of Columbia.
17 No. 4949. Ad. D. 17. J. A. Maedel, Proctor.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of JAMES F. BADEN, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 29th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of March, 1892.
17 MacNulty & Johnson, Proctors. MARGARET R. BADEN,
413 L St., n. w.

THIRD INSERTION.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

The 18th day of April, 1892.

Harvey Durand v. Arthur E. Bateman and others. } No. 12,762. Equity Docket 81.

On motion of the plaintiff, by Mr. A. S. Worthington, his solicitor, it is ordered that the defendants, WILLIAM W. MACKALL, Jr., LAURA R. GREEN, AMOS H. PLUMB, MARY PLUMB, RUTH PLUMB, (a minor), CARRIE PLUMB, (a minor), and PRESTON PLUMB, (a minor) cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to ascertain and determine the interest of the complainant, Harvey Durand, in certain real estate in the District of Columbia, comprising about two hundred and forty acres and lying along both sides of Massachusetts avenue, extended between Rock Creek and the Tenleytown Road; and to have Arthur E. Bateman removed from his position as one of the trustees holding and managing said real estate, and also to have the court supervise and direct the execution of the trust under which said real estate is now held by said Bateman and others.

Provided a copy of this order be published in the meantime once a week for three weeks, beginning with the present week, in the Washington Law Reporter and in the Evening Star published, in said District.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
16 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

Holding a Special Term for Orphans' Court Business,

April 16th, 1892.

In the case of John Elwin Mattern, executor of ANNA S. MATTERN, deceased, the executor aforesaid has, with the approval of the court, appointed Friday, the 20th day of May A. D. 1892, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: L. P. WRIGHT, Reg ster of Wills for the District of Columbiia.
16 No. 4371. Ad. Doc. 16. Leon Tobriner, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Barrow L. Walker et al. v. Gerard H. Turner et al. } Equity. No. 12,800.

George E. Hamilton and John Ridout, trustees in the above cause, having reported to the court that they have sold lots 17 and 18 in square 24, Washington, D. C., to Barlow L. Walker, at private sale, for the sum of \$2,508.44, it is this 16th day of April, A. D. 1892, ordered that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 16th day of May, 1892.

Provided a copy of this order shall be published in the Washington Law Reporter for the space of three weeks by successive weekly insertions in said paper, before said last named day.

Test: A. B. HAGNER, Justice.
A true copy. Test: J. R. Young, Clerk.
16 By M. A. Clancy, Asst. Clerk.
[Filed April 18, 1892. J. R. Young, Clerk.]

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of MARTHA J. POTTS, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of April, 1892.

J. W. ELDER,
16 A. C. Richards, Proctor. 511 6th St., n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 21st day of April, 1892.

Almon P. Bogue
v. { No. 18,485. Equity Docket.
Elizabeth V. Bogue.

On motion of the plaintiff, by Mr. L. Cabell Williamson, his solicitor, it is ordered that the defendant, ELIZABETH V. BOGUE, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for divorce *a vinculo matrimonii* on the ground of desertion.

Provided a copy of this order be published once a week for three successive weeks previous to said day in the Washington Law Reporter and in the Washington Post.

By the Court. A. B. HAGNER, Justice, &c.

True copy. Test: J. R. Young, Clerk.
16 By M. A. Clancy, Asst. Clerk.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration c. t. a. on the personal estate of BENJAMIN THOMAS REILLY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of April, 1892.

JULIA POINDEXTER,
16 R. Ross Perry, Proctor. 1634 Conn. Avenue.

This is to Give Notice

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a special term for Orphan's Court business, letters testamentary on the personal estate of ANN O'CLANCY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 19th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 19th day of April, 1892.

GEORGE P. ZURHORST,
MICHAEL McCORMICK,
16 Padgett & Forrest, Proctors. 227 Pa. Ave., s. e.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the supreme Court of the District of Columbia, holding a special term for Orphans' Court Business, letters of administration on the personal estate of JOHN ADAM SPROESSER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of March, 1892.

MARY E. C. SPROESSER,
mark
16 Julius A. Maedel, Proctor. 206½ 7th St., n. w.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

The 18th day of April, 1892.

Joseph Schneider, for the use of Westel W. Willoughby, Plaintiff,
v.

Arthur E. Bateman, Charles E. Coon, Walter Watson and Harvey
Durand, Partners, trading under the name of and style of
Bateman & Company, Defendants.

At Law. No. 32,550.

On motion of the plaintiff, by W. Willoughby, his attorney, it is ordered that the defendant, HARVEY DURAND, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to recover a judgment against the defendants for \$1,645, with interest from December 31, 1890, and to maintain an attachment upon the property of the defendants or either of them, situated within the District of Columbia, and which has been levied upon in this suit for this amount.

M. V. MONTGOMERY, Asso. Justice.

True copy. Test: J. R. Young, Clerk.
16 By H. W. Hodges, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 18th day of April, 1892.

Mary Ida Stanton
v. { No. 18,805. Eq. Docket 33.
Horace Baxter Stanton et al.

On motion of the plaintiff, by Mr. James F. Hood, his solicitor, it is ordered that the defendants, WILLIAM PITTY STANTON, MARGARET SCRUTON, HELEN MEEERVE, and ELIZABETH LEIGHTON, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to sell the real estate of the infant defendant, Horace Baxter Stanton.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
16 By M. A. Clancy, Asst. Clerk.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of JOHN EDWIN MASON, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of April, 1892.

HENRY M. BAKER, Executor,
16 Henry M. Baker, Proctor. 1411 F Street, n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of ISAAC BOSTON, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 18th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of April, 1892.

MATTHIAS H. HUNTER,
Bennington, D. C.
Robert W. McPherson, Proctor, 1429 New York Ave., Room 8.

This is to Give Notice

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of DOMINICK McMENAMIN, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 9th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 9th day of April, 1892.

JAMES T. RYON,
OWEN DONNELLY,
Care of Edwards & Barnard, 500 5th St., n. w.
16 Edwards & Barnard, Proctors.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

Theodore Scheckels
v.
George J. Goddard et al. } In Equity. No. 18,408.

Theodore Scheckels, the trustee appointed by decree of the court in this cause to make sale of the west twenty-four (24) feet front, by the depth thereof, of lot numbered fifteen (15) in square numbered four hundred and fifty-three (453), in the city of Washington, with the improvements thereon, having reported the sale thereof to Herman Gasch, for the sum of nine thousand and ninety dollars (\$9,090), on motion of complainant by his solicitors, it is, this 18th day of April, 1892, ordered, adjudged and decreed that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 12th day of May, 1892.

Provided that a copy of this decree be published in the Washington Law Reporter once in each week for three successive weeks prior to said date.

A true copy. Test: A. B. HAGNER, Justice.
J. R. Young, Clerk.
16 By M. A. Clancy, Asst. Clerk.
[Filed April 18, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 19th day of April, 1892.

Rosamond Watson v. No. 18,741. Eq. Docket 33.
Alexander Watson.

On motion of the plaintiff, by Mr. Campbell Carrington, her solicitor, it is ordered that the defendant, ALEXANDER WATSON, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is an absolute divorce upon the ground of willful desertion and abandonment, by the party complained of, against the party complaining, for the full uninterrupted space of two years, from the filing of this cause.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
16 By M. A. Clancy, Asst. Clerk.
[Filed April 19, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

April 16th, 1892.

In the case of Mary Ida Stanton, executrix of JOSHUA OTIS STANTON, deceased, the executrix aforesaid has, with the approval of the court, appointed Friday, the 20th day of May, A. D. 1892, at 10 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the executrix will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
16 No. 4404. Admn. Doc. 16. James F. Hood, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

April 16th, 1892.

In the case of William Bryan, executor of REBECCA COOPER, deceased, the executor aforesaid has, with the approval of the court, appointed Friday, the 20th day of May, A. D. 1892, at one o'clock p. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
16 No. 2679. Ad. Doc. 18. E. H. Thomas, Proctor.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**
Holding a Special Term for Orphans' Court Business.

April 16th, 1892.

In the matter of the estate of HENRY B. JAMES, late of the city of Washington, D. C., deceased.

Application for the probate of the last will and testament and for letters testamentary on the estate of the said deceased, has this day been made by Gertrude James and Henry K. Leaver.

All persons interested are hereby notified to appear in this court on Friday the 20th day of May next, at one o'clock p. m., to show cause why the said will should not be proved and admitted to probate and letters testamentary on the estate of the said deceased should not issue as prayed.

Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT, Register of Wills for the District of Columbia.
16 No. 4936. Ad. Doc. 17. Wm. F. Mattingly, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The Washington Loan & Trust Co., Administrator.

v. No. 18,583. Equity.

Thomas V. Hammond et al.

John B. Larner, the trustee appointed by a decree passed herein on the second day of March, A. D. 1892, for the sale of the real estate in the bill filed in said cause described, having represented that he, after having complied with the requirements of said decree as to advertisements, &c., offered said real estate for sale at public auction in front of the premises on the 18th day of March, A. D. 1892, but did not receive an adequate bid therefor and did not sell the same; and that since said time has been endeavoring to sell said property and has succeeded in obtaining an offer from Louise M. Owens for the purchase of said property for the sum of seventy-eight hundred dollars (\$7,800) cash:

It is this 14th day of April, A. D. 1892, ordered that the sale of said property to the said Louise M. Owens for the sum of seventy-eight hundred dollars (\$7,800) cash, be ratified and confirmed, unless cause to the contrary be shown by the 14th day of May, A. D. 1892.

Provided that notice of this order be published once a week for three weeks prior to the said 14th day of May, A. D. 1892, in the Evening Star and the Washington Law Reporter.

A. B. HAGNER.
A true copy. Test: J. R. Young, Clerk.
16 By M. A. Clancy, Asst. Clerk.

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of HARRIET NISBET LECONTE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 11th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 11th day of April, 1892.
16 EVA LECONTE, Archibald Young, Proctor, Sun Bldg. 1745 Corcoran St.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 20th day of April 1892.

Anna Seifriz v. No. 13,809. Docket 33.
Paul Seifriz.

On motion of the plaintiff, by Messrs Worthington & Heald, her solicitors, it is ordered that the defendant, PAUL SEIFRIZ, cause his appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain decree of divorce from the bond of marriage with the defendant on the ground of desertion.

A. B. HAGNER.
A true copy. Test: J. R. Young, Clerk.
16 By M. A. Clancy, Asst. Clerk.
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WASHINGTON, D. C., - - - MAY 12, 1892

Book Review.

THE SO-CALLED RIGHT OF ASYLUMS IN LEGATION. A consideration of recent international incidents. By ALEXANDER PORTER MORSE, Washington, D. C.

This is a pamphlet which presents very concisely, upon this important subject—1st. The Law of Nations; 2d. The Principles and Practice of the United States; and 3d, The Position of Chile in this Regard. It is quite apparent that the article was called out by reason of the action of the Minister of the United States at Santiago, Chile, in protecting the deposed President of Chile within the Legation of the United States.

Mr. Morse cites freely by foot-notes the leading authorities with reference to such matters. His article is so brief that it may be read in half an hour, and is so clear in its statements that it can be appreciated and remembered.

The article is reprinted in pamphlet, from the *Albany Law Journal* of April 9, Vol. 45, No. 15.

FIRE INSURANCE—1. Proofs of Loss.—A failure to make proofs of loss within 30 days, as required by the terms of the policy, entirely bars an action thereon, in the absence of a waiver, when the policy expressly provides that a failure to comply with its conditions shall work a forfeiture. *Tubbs v. Insurance Co.*, 48 N. W. Rep., 296; 84 Mich., 648, and *Insurance Co. v. Kranch*, 38 Mich., 293, distinguished. Mich. Supreme Ct., *Gould v. Dwelling House Ins. Co.*, 51 N. W. Rep., 455.

2. Waiver by Agent. A provision at the end of an insurance policy that no agent shall have power to waive any of the conditions thereof except by a writing indorsed upon or attached to the policy is valid, and a verbal waiver of proof of loss by him is not binding on the company. It must be presumed that the insured had knowledge of a provision in the policy against a verbal waiver of conditions by agents. *Id.*

Supreme Court of the District of Columbia,
IN GENERAL TERM.

GEORGE TAYLOR

v.

CHARLES C. DUNCANSON.

1. If the defendant's plea and answer had been filed in pursuance of the rules of practice of the court, there would be ground, perhaps, for the objection that the defendant was not required to have it disposed of on motion to strike out, and two days' notice.
2. The defendant's answer does not specifically deny any of the facts set out in the twelve specifications of fraud or mistake charged in the amended bill of complaint; and therefore it does not comply with the order allowing the defendant to plead anew to the specific charges set out in the amended bill.
3. The motion made by the complainant was to strike out the plea, not because it did not comply with the ordinary rules of practice, or the ordinary rules of court, but because it did not comply with the special leave granted to plead anew.
4. As a general rule, unquestionably, judges at special term have a right to say whether any act ordered by them is complied with, and unless we find that some substantial right of the party has been affected by the order, we will not consider the matter on appeal. In this case no such right is involved.
5. Where the bill of complaint charges fraud or errors the defendant must meet it. His plea may traverse the charges in a general way. But besides that, it is incumbent upon the defendant to support his plea by a sworn answer, and in his answer he must traverse the specific averments of the bill. He must go further than that, and discover as to all the matters alleged in avoidance of the bar, and there must be a full answer and discovery.
6. Where the court in special term ordered that the defendant have leave to file "a further amended plea and an answer in support thereof, but that in both the plea and answer in support thereof, to be filed under the leave hereby given, the defendant shall answer specifically and in detail each of the said twelve specifications of fraud and misrepresentation contained in the amendments to the bill of complaint in this cause, and the defendant in such answer shall make full and complete discovery," etc., the order does not involve anything prejudicial to the defendant, nor affect any substantial right, and therefore the appeal is dismissed.

Equity No. 10,294. Docket 26. Decided April 11, 1892.

MESSRS. M. F. MORRIS, GUYON MILLER and GEORGE TAYLOR for complainant.

MESSRS. H. E. DAVIS and H. W. GARNETT for defendant.

Mr. Justice COX delivered the opinion of the court:

This is an appeal from an interlocutory order passed at special term by Mr. Justice Hagner, and a motion to dismiss the appeal upon the ground that the order passed by him was not an appealable one. In the argument, the merits of the order itself were freely discussed, as well as the question of

appealability, and we find that we cannot very well consider one without looking at the other.

There is doubtless a class of cases in which interlocutory orders are not appealable; yet, in a particular case, such an order may become a very important matter to a party, because it may deprive him of a substantial defense or remedy and in that way involve the merits of the action. Therefore it is not sufficient to characterize an order generally as one not appealable.

It is well then to inquire how this case arose.

A bill was filed by Mr. Taylor against Duncanson for a general accounting. He had conveyed some property to Duncanson to secure certain money and upon certain trusts involving a sale of the property and an application of the proceeds. A long series of transactions had taken place and this bill was filed for a general accounting. The defendant pleaded an account stated. Thereupon, as I recollect it, because I was in the Equity Term when the case was begun, there was a replication, and then the parties went on to take proof. The complainant undertook to prove the very matters which the defense held themselves exempted from discovering, by pleading an account stated. The defendant declined to answer interrogatories, in which he was sustained by the court, and thereupon the complainant had leave to amend his bill and he filed a bill setting out various allegations of fraud in the procurement of the stated account and errors in the account itself. To the amended bill, the defendant still simply pleaded an account stated, nothing more. Thereupon, a motion was made on behalf of the complainant, to strike out the defendant's plea, upon various grounds, and among others, that the order of court gave the defendant leave only to answer the amended bill, and not to file a plea; that the plea was wholly informal and insufficient as a plea, and that the same was not filed within the time limited by the order of the court. The court did not grant this motion, although holding that the plea was irregular and insufficient, under the rule of court and under the general rules of chancery practice. The order passed at that time said: "Upon consideration of the motions filed in this cause on behalf of the complainant on the 10th day of February, 1892, and after hearing the argument as to the sufficiency of the plea filed herein by the defendant on the

29th day of January, 1892, it is, this 12th day of February, 1892, ordered that the several motions set forth in the paper filed herein by the complainant on the 10th day of February, 1892, be, and the same are, and each of them is, hereby overruled; but it appearing to the court that the said plea is insufficient *because it is unsupported by an answer*, and because it does not meet the several allegations of the amendments to the bill of the complainant in this case, in regard to these specific charges of fraud, error, and misrepresentation contained in said amendment concerning the account stated, referred to in said amendments and in said plea, said plea is accordingly overruled, and leave is given to the defendant to file an amended plea with such answer within five days from this date."

One of the objections to the plea was that it was informal and irregular, and the motion was to strike it out. Besides overruling the plea, special leave was given to file another. No appeal was taken from this order, and, therefore, it is to be assumed that the party acquiesced in it. Within five days thereafter, the defendant filed an amended plea. After stating the account, etc., the defendant denies that the said account was procured through fraud, misrepresentation, or the suppression of facts, or that he, the defendant, neglected to produce and deliver his vouchers at or before the statement of the said account, or that he refused to allow the complainant to examine the same, or that said account is incorrect or fraudulent in any of the said particulars in the said amendments to the said bill of complaint mentioned and alleged, or in any particular, except that he admits it to be true, as alleged in the sixth specification of the said amendments, that the certain interest therein mentioned was calculated in the said account up to the 31st day of July, 1886. The answer was a traverse of the charges in the bill, *in general terms*. It does not specifically deny any of the facts set out in the twelve specifications of fraud or mistake.

Upon the filing of that paper, which was begun as a plea and ended as an answer, the complainant moved "the court to strike from the files the paper filed in this cause on behalf of the defendant on the 17th day of February, 1892, and purporting to be a plea to the amendments to the bill of complaint in this cause, for the reason that the same does not comply with the terms of the

order made in this cause, on the 12th day of February, 1892, giving the defendant leave to file an amended plea within five days thereafter, said paper being defective and insufficient as a plea, in this," etc. Two days' notice was given of the hearing of this motion. The first ground of complaint upon the part of the defense is, that according to the rules of chancery practice, and according to our own rules, where an answer is filed and a plea is filed, the defendant has a right to have them set down regularly for hearing, and is not obliged to submit, on two days' notice, to have his plea and answer acted upon; that this is not required by the rules of court nor by the general rules of practice in chancery, and that this is a question affecting a substantial right. Now, if the plea and answer had been filed in pursuance of the rules of practice of the court, there would be ground, perhaps, for this objection, but under the circumstances of this case, we do not think that the rules—the ordinary rules of the court—apply. The motion made is not to strike out because the plea and answer do not comply with the rules of court, but because they do not comply *with the conditions of an order passed by the court, and the court granted the motion for that reason.* The defendant was in default, in the first instance, in not having complied with the requirements of the court's order. It was a matter in the discretion of the court, and the court simply gave the permission to plead anew on certain conditions; that is, that he should answer the specific charges set out in the bill. The failure to do this is the ground of the motion. It was a motion to strike out the plea, because it did not comply "with the terms of the order made in this case on the 12th day of February." The court acted upon this motion, reciting in its decree or order: "And the court, upon consideration thereof, being of the opinion that said paper purporting to be a plea filed herein by the defendant, on the 17th day of February, 1892, is not in accordance with the terms of the order made herein on the 12th day of February, 1892, giving the defendant leave to file an amended plea, it is this 7th day of March, 1892, ordered that said paper purporting to be a plea and an answer in support thereof filed herein by the defendant on the 17th day of February, 1892, is defective and insufficient," etc. This shows that the ordinary rules of practice do not apply to such a case. It is a case where special leave was given to plead upon a certain condition, and

upon the paper being filed, an application is made to the court on the ground that it did not comply with the conditions imposed. The motion made by the complainant was to strike out the plea, not because it did not comply with the ordinary rules of practice, or the ordinary rules of the court, but because it did not comply with the special leave granted on the 12th day of February, 1892.

Now, undoubtedly, it is for the judge at special term to insert a condition in any order giving leave to file pleas, to a defendant in default. As a general rule, unquestionably, judges at special term have a right to say whether any order by them is complied with, and certainly unless we find that some substantial right of the party has been affected by the order, we will not consider the matter on appeal.

In a case like the present one, where the defendant interposes the plea of an account stated, and the complainant has alleged matters of fact in his bill, charging fraud or errors in the account, the defendant must meet the charge. In the first place, he must file his plea of an account stated, and in his plea he must traverse the matters of fact alleged in evidence of it in the bill. It is contended, and we think properly, on the part of the defense, that *in the plea* it is sufficient to traverse these matters in general terms, according to the ordinary rules of practice. It is not necessary that the plea should go into detail; it may traverse the matters in a general way. But besides that, it is incumbent upon the defendant to support his plea by a sworn answer, and in his answer he must traverse the specific averments of the bill. Not only that, but he must go a little further, and must discover as to all the matters alleged in avoidance of the bar, and there must be a full answer and discovery. The rule is laid down thus in Daniel's Chancery Practice, p. 614: "We have before seen, that wherever a bill, or a part of a bill, the substantive case made by which may be met by a plea, brings forward facts, which, if true, would destroy the effect of the plea, those facts must be negatived by proper averments in the plea; otherwise, they will be considered as admitted, and so deprive the defendant of the benefit of his defense. A plea, however, cannot be excepted to, and as it is not necessary that an averment in a plea should do more than generally deny the facts charged in the bill, the plaintiff might, if it were not possible to require an answer from the defendant, in addition to his plea, be deprived of the indefeasible

right which he has to examine the defendant upon oath, as to all the matters of fact stated in the bill which are necessary to support his case.

"The same principle also required that a negative plea should be supported by an answer in those cases only in which the bill stated or charged facts by way of evidence of the plaintiff's right. It was required in those cases, because the plaintiff, having a clear right in equity to a discovery of all matters within the knowledge of a defendant which would enable him to support his case, it would have been against that principle, if a defendant could, by merely denying the existence of the claim, have deprived the complainant of the means of proving its validity."

The court in the last order, which is appealed from, states that the paper purporting to be a plea and the answer in support thereof, is defective and insufficient "in this, that neither in that part of said paper which purports to be a plea, nor in that part thereof which purports to be an answer in support of such plea, does the defendant answer specifically any of the twelve specifications of fraud and misrepresentation," etc. It is very clear that the complainant is entitled to that answer either in the plea or in the answer, or both. Now it appears that both the plea and the answer traverse the averments of the bill in the most general terms, not specifically as I think the rules require, at least as to the answer, and as the order of court required; and the court was, therefore, doing no injustice to the defendant in striking out the plea and answer from the files for the reason that they did not comply with either the rules of court or the special order of court.

We are of the opinion, therefore, so far as regards the first paragraph of the order, that the court, in holding that said plea and the answer in support thereof "is defective and insufficient, in this, that neither in that part of said paper which purports to be a plea, nor in that part thereof which purports to be an answer in support of such plea, does the defendant answer specifically any of the twelve specifications of fraud and misrepresentation contained in the amendments to the bill of complaint in this cause, except the sixth; and it is further ordered that said paper filed herein by the defendant on the 17th day of February, 1892, be, and it is hereby,

overruled for these reasons," did not do any injustice to the defendant.

There is one more paragraph in this order, as follows:

"And it is further ordered that the defendant have leave to file in this cause on or before the 14th day of March, 1892, a further amended plea and an answer in support thereof, but that in both the plea and answer in support thereof, to be filed under the leave hereby given the defendant shall answer specifically and in detail each of the said twelve specifications of fraud and misrepresentation contained in the amendments to the bill of complaint in this cause, and the defendant in such answer shall make full and complete discovery as to all the matters charged or inquired about in each of the said twelve specifications and in the prayers of said amendments to said bill of complaint."

Now, according to the *general rules* as laid down in Daniels' Practice, which I have already stated, the defendant would not be bound, in his plea, to make the full answer that is required in this order; but that is no serious objection to this order, for two reasons: the first is, that this was a permission given after two defaults to file a plea and an answer, and the court had a right to impose any reasonable condition upon the defendant; and, in the next place it could do the defendant no conceivable harm, to require him to repeat, in his plea, what he was clearly bound to set forth in his answer in support of it.

The order appealed from belongs undoubtedly to the class of orders not generally appealable and is one of those which may be passed in the discretion of the court. Upon looking into the order itself, we see nothing in it which affects the merits of the case, and therefore the *appeal is dismissed*.

STATUTE OF FRAUDS.—When plaintiff refuses to furnish any further supplies to a certain person unless the defendants will become responsible, the parol promise of the defendants to pay for all supplies thereafter delivered is an original undertaking, and not, therefore, within the Statute of Frauds; and the fact that the supplies were charged on the books to the person to whom they were delivered is not conclusive that the sale was made on his credit, but may be explained by showing upon whose credit the sale was in fact made. *Mackey v. Smith (Oregon)*, 28 Pac. Rep., 974.

Law Blanks at the Law Reporter, 503 E.

Supreme Court of the District of Columbia.
IN GENERAL TERM.

THE UNITED STATES
v.
ANNIE JACKSON.

1. The crime of receiving stolen goods is not to be regarded as one of the petty offenses which, under the Constitution, are not to be tried by jury.
2. This case comes within the rule laid down by the Supreme Court in Callan v. Wilson, as followed by this court in the case of Addison Day and other cases disposed of by this court.
3. Under the Constitution of the United States, it is imperative that in all prosecutions where the party is entitled to trial by jury the trial in the Police Court shall be by jury. There is no power given to the Police Court to try in any other way.
4. It was essential that the Police Court should have had jurisdiction to try the case without a jury at the time the oath was administered to the defendant, and not having that jurisdiction, and the oath having been administered upon a trial by the Court, perjury cannot be assigned upon any alleged false statement which she may have made in giving her testimony.

No. 18711. Criminal Docket 18. Decided March 7, 1892.

The CHIEF JUSTICE and Justices Cox and JAMES sitting.

Mr. C. H. ARMES for the United States.
Mr. T. C. TAYLOR for the defendant.

CHIEF JUSTICE BINGHAM delivered the opinion of the Court:

The defendant was convicted in the Supreme Court of the District, holding a criminal term, upon an indictment for perjury, and after verdict she filed her motion in arrest of judgment, which motion was certified to this court by the justice holding the special term for hearing in the first instance.

The alleged false swearing upon which perjury is assigned, as shown in the indictment, was in a certain criminal case in the Police Court of the District of Columbia, wherein the defendant was prosecuted on an information for the crime of receiving stolen goods, and in which the defendant testified in her own behalf. This raises two questions at least. Whether the crime of receiving stolen goods is to be regarded as one of the petty offenses on the trial of which the defendant would be entitled to a jury under the Constitution is a question. The classification of this crime depends upon the construction of the Statute of March 3, 1891, relating to the Police Court of the District of Columbia. Section 2, of the act referred to, is as follows: "That prosecutions in the Police Court shall be on information by the proper prosecuting officer.

"In all prosecutions within the jurisdic-

tion of said court in which, according to the Constitution of the United States, the accused would be entitled to a jury trial, the trial shall be by jury.

"And also in all prosecutions in which such persons would not be by force of the Constitution of the United States entitled to a trial by jury, but in which the fine or penalty may be fifty dollars or more, or imprisonment for thirty days or more, the trial shall be by jury unless the accused shall, in open court, expressly waive such trial by jury and consent to a trial by the judge, in which case the trial shall be by such judge, and the judgment and sentence shall have the same force and effect in all respects as if the same had been entered and pronounced on the verdict of a jury."

Now, if the crime of receiving stolen goods with which the defendant was charged in the Police Court is one of the petty offenses under the Constitution, where the defendant was not entitled to a trial by jury, and came within the second provision of section 2 of the act aforesaid, she would be entitled to a jury, but might waive it. But if this be a crime, as was settled by the Callan Case, wherein the party charged is entitled to a trial by jury, then it comes within the first clause of the second section.

It is said by Blackstone that receiving stolen goods, knowing them to have been stolen, is a high misdemeanor at common law and punishable at common law by fine and imprisonment. 4 Blackstone's Commentaries, p. 38 and p. 132. Receiving stolen goods was a misdemeanor at common law, prosecuted upon indictment, and under certain English statutes the receiver was prosecuted in some cases as accessory to the felony or larceny. The crime was always triable by a jury.

Receiving stolen goods was an offense at common law punishable by fine and imprisonment. Desty's American Criminal Law, Sec. 147.

We think it quite clear that the crime of receiving stolen goods is not to be regarded as one of the petty offenses which, under the Constitution, are not to be tried by jury, and this case comes within the rule laid down by the Supreme Court in Callan v. Wilson, as followed by this court in the case of Addison Day and other cases disposed of by this court. But it is insisted, that as this case was tried after the passage of the Act of Congress which gave to the Police Court a jury with power to try a party by jury, and inasmuch as this party

at the time she was tried for receiving stolen goods in the Police Court had the choice of being tried by a jury if she so desired, that she might waive a jury if she saw proper and submit to be tried by the court. A number of decisions are cited by counsel for the Government from the different States in support of this position. It is claimed, and perhaps it is true, that a majority of the States have held that a jury trial might be waived. We believe that the Supreme Court of the United States has not passed upon this question. Two cases decided by the Circuit Courts of the United States have been brought to our attention, one holding that a jury might be waived and another that it may not be waived. But we have a very different question here. It is, whether the Police Court *has the jurisdiction* conferred upon it by the first clause of the section before referred to, to try a case of this character without a jury. That court has no jurisdiction to try an offense either with or without a jury except under the authority of this section : "In all prosecutions within the jurisdiction of said courts in which, according to the Constitution of the United States, the accused would be entitled to a jury trial, the trial shall be by jury." We regard this as an imperative provision that in all prosecutions where the party is entitled under the Constitution of the United States to trial by jury, the trial *shall be by jury* in the Police Court. Then follows another provision that in cases where the party is not entitled to a jury they shall have a jury if they demand it or if they do not waive it, provided that imprisonment for the offense is over thirty days and the fine to be assessed exceeds fifty dollars, clearly showing that it was the intention of Congress to specify precisely in this section under what conditions the court might try a case without a jury. To wipe out all confusion and make the distinction perfectly clear, they have said that in all cases where the party was entitled to a trial by jury under the Constitution he *should be* tried by a jury, and there is no power given to the Police Court to try in any other way. It is suggested by counsel that notwithstanding the Police Court did not have jurisdiction to try this case, that she might have objected to it in a direct proceeding in error, or on appeal ; yet, when it came in question on her trial for perjury in the criminal court upon an indictment found in that court, that her false swearing might nevertheless be regarded as perjury because

the Police Court might be regarded as having jurisdiction over the crime of receiving stolen goods when thus called in question collaterally. But we think it is very well settled, the authorities seeming to be uniform upon that point, that when perjury is assigned to have been committed in the course of a trial in any court, that the court in which the trial is held, where the perjury is alleged to have been committed, must have had jurisdiction of the action, or prosecution in which the oath was taken, and that unless the court had jurisdiction to try and dispose of the case perjury cannot be assigned. We therefore hold that it was essential that the Police Court should have had jurisdiction to try the case without a jury at the time the oath was administered to the defendant, and not having that jurisdiction, and the oath having been administered upon a trial by the court, perjury cannot be assigned upon any alleged false statement which she may have made in giving her testimony in the case.

The motion in arrest of judgment will be sustained and the case remanded to the Criminal Court with instructions to *discharge the defendant.*

STREET RAILWAY—Electric Railroads—Collision with Vehicles—Negligence.—In action against an electric railroad it appeared that plaintiff and her husband, while driving along the track after dark, were struck and injured by a car ; that there was no headlight on the car, nor any light either inside or out ; and that it was running 15 or 20 miles an hour. Previous to that time the cars had used headlights. The husband testified that when he went upon the track he looked for a car, but did not see any ; and that, if the car had had a headlight, he could have seen it $1\frac{1}{2}$ or 2 miles. The wife testified that she, too, looked for a car when they went upon the track, but that afterwards she did not look particularly, as she thought they would see the headlight. The first warning she had of the car was the sight of the flame on the trolley, and the glitter of the car window. It was then too late to get out of the way. Held, that the plaintiff and her husband were not negligent in driving upon the track, and that whether they used ordinary care to prevent the collision was a question for the jury. Mich. Supreme Ct., Rascher v. East Detroit & G. Rwy Co., 51 N. Y. Rep., 463. (2) It is admissible, in such a case, to show that the public were in the habit of driving on the track, as bearing upon the question of defendant's negligence in running a car without a headlight or other light. Id.

**Supreme Court of the District of Columbia,
IN GENERAL TERM.**

**THE UNITED STATES
v.
FRITZ HERZOG.**

1. The Act of Congress against gaming (22 Stat. p. 412), provides that on conviction, the defendant may be punished by imprisonment for not more than one year and by fine not exceeding five hundred dollars. Gaming as thus defined and punished is not a petty offense.
2. It is not at all material that this definition and punishment has been provided since the adoption of the Constitution.
3. The defendant's waiver of a trial by jury was a nullity where the Police Court could not grant a trial by jury because it had no power under the law to impanel a jury. The court was not so constructed as to give the defendant a legal trial. The defendant had no choice between having and not having a jury.

No. 18,110. Crim. Doc. 18. Decided March 7, 1892.

The CHIEF JUSTICE and Justices COX and JAMES sitting.

Mr. C. H. ARMES for the United States.
Mr. A. A. LIPSCOMB for the defendant.

CHIEF JUSTICE BINGHAM delivered the opinion of the court:

The defendant was convicted in the Police Court under section 2 of the Act of Congress of January 31, 1883, Richardson's Supplement, p. 396, of permitting a gaming table to be set up on premises under his control. The record shows that a jury trial was waived, and he was sentenced to pay a fine of twenty-five dollars and to be imprisoned in jail for one day. Upon appeal to the Supreme Court of the District, a motion to quash the information was filed, which was by the court overruled, and thereupon the defendant filed in this court a plea to the jurisdiction of the Police Court to try the case. To which plea there was a demurrer, which was certified to be heard in the General Term in the first instance.

This conviction of the defendant was before the passage of the Act of Congress of March 3, 1891, and when there was no provision of law authorizing the impaneling of a jury in the Police Court.

The question is, whether gaming, as defined and punished by the second section of the Act of Congress against gaming (22 Statutes at Large, p. 412), is to be regarded as one of the petty crimes not embraced by the provision of the Constitution relating to trial by jury as held by the Supreme Court of the United States in the case of *Callan v. Wilson*, 127 U. S., p. 557. The

act against gaming provides that on conviction of the defendant he may be punished by imprisonment for not more than one year and by fine not exceeding five hundred dollars. Surely it cannot be contended that gaming as thus defined and punished is a petty offense. It is not at all material that this definition and punishment has been provided since the adoption of the Constitution. The rule fixed in the Constitution was for all time, and applies to crimes, misdemeanors and offenses created by Congress as well as those existing at the time of the adoption of the Constitution. The record shows that Herzog waived a trial by jury, and this it is claimed estops him from now asserting that his conviction was illegal because not by a jury. In *in re Day*, it was determined upon the authority of *Callan v. Wilson*, that it was no answer to the point made, to say that a person tried without a jury in the Police Court had the right to appeal to the Supreme Court of the District, where he could be tried by a jury, because his right under the Constitution was to be tried by a jury in the first instance. Now, it seems to us that this substantially settles the question of the effect of waiving a jury trial. The Police Court could not grant a trial by jury because it had no power under the law to impanel a jury. The court was, therefore, not so constructed as to give the defendant a legal trial. The defendant had no choice between having and not having a jury, which he should have had before his waiver. He should have had that before he could be bound by his waiver, and under such circumstances, the waiver of a jury must be held a nullity.

The demurrer to the plea is overruled, the plea sustained, and the defendant discharged.

CONSTITUTIONAL LAW—Foreign Corporations.—A State may impose upon foreign corporations (including those organized under the laws of other States) any conditions it may see fit as a prerequisite to their doing any business within its borders. An Act N. Y. May 26, 1881, exacting from all corporations doing business in the State a tax proportioned to the total amount of their capital stock, without regard to what part there is employed within the State, or to the amount or kind of business done there, cannot be impeached on the ground of repugnancy to any provisions of the Federal Constitution. *Horn Silver Mining Co. v. People of New York*, U. S. S. C., 12 S. C. Rep., 408.

The Gladstone light of jurisprudence.

Sir Edward Coke.

United States Court of Appeals.
THIRD CIRCUIT.

**STATE, EX REL. POSTAL TELEGRAPH
 CABLE CO. v. DELAWARE AND
 ATLANTIC TELEGRAPH &
 TELEPHONE CO.**

**DISCRIMINATION BY TELEPHONE
 COMPANIES.**

Decided April, 1892.

1. Telegraph and telephone companies, while not required to extend their facilities beyond such reasonable limits as they may determine upon, cannot discriminate between individuals of classes which they undertake to serve.
2. Thus, a telephone company may confine the use of its facilities to the carriage of personal messages for individuals, excluding those of telegraph companies and others who forward messages for hire; but if it send messages for one telegraph company, it cannot deny the use of its wires to another.

In error to Circuit Court of United States, District of Delaware. Sitting at Philadelphia.

Mr. Justice BUTLER delivered the opinion of the court:

There is no controversy about the facts of this case.

The relator owns and operates a telegraph system with lines extending throughout the country, having its principal office in the city of Wilmington. The respondent owns and operates a telephone exchange in Wilmington, connected with the places of business and residences of subscribers, to whom telephone facilities are furnished. One of the subscribers enjoying such facilities is the Western Union Telegraph Company.

The relator, desiring similar facilities, on the 20th of November, 1889, applied to the respondent for connection with its exchange; which application was refused.

The proofs show that up to November 12, 1879, the National Bell Telephone Company and the Western Union Telegraph Company were the owners of rival telephone patents, about which they had been engaged in litigation. At that date they entered into a contract by virtue of which the former company became the owner of the patents previously held by the latter, and the latter company acquired an exclusive license to use the telephone for transmitting telegraphic messages, under all the patents for a term of seventeen years.

Subsequently the patents were assigned (subject to this license) to the American

Bell Telephone Company. All licenses, including the respondent's, subsequently granted under the patents, have been made subject to that of the Western Union Company.

It is no longer open to question that telephone and telegraph companies are subject to the rules governing common carriers, and others engaged in like public employment. This has been so frequently decided that the point must be regarded as settled. While it has not been directly before the Supreme Court of the United States, cases in which it has been so determined are cited approvingly by that court in *Budd v. New York*, not yet reported.

While such companies are not required to extend their facilities beyond such reasonable limits as they prescribe for themselves, they cannot discriminate between individuals of classes which they undertake to serve. As common carriers of merchandise may prescribe the points between which they will carry, and the description of goods they will accept, so, doubtless, may carriers of messages limit their business obligations.

If, therefore, the respondent had confined the use of its telephonic facilities to the carriage of personal messages for individuals, excluding those of telegraph companies, and others who forward messages for hire, the relator would, probably, have no just ground of complaint. As we have seen, however, it did not so limit its business; but carried telegraphic messages, as well as others.

The respondent contends, however, that this was not its voluntary act; that the Western Union Telegraph Company had acquired rights superior to its own; and that it could not, therefore, exclude this company from the use of its facilities. This position cannot be sustained. The admission of the Western Union Company to its system was the respondent's voluntary act. Such admission could only be obtained by its express consent. To say that its license required such admission does not help the respondent. It voluntarily accepted the license and assented to its terms. Nor does it help the respondent to say that the license could not be obtained on other terms. If not, it could have been declined. Had it been, and the business avoided, the responsibilities which attend such employment would also have been avoided. Accepting the license, however, as the respondent did, and engaging in the carriage of messages, it cannot escape the public duties which attach to the employment. It must carry for all

persons belonging to the classes it undertakes to accommodate. Its alleged responsibility to the licensor for so carrying impartially affords no excuse. The responsibility was improperly assumed, if it exists. But it does not exist. The object of the stipulation out of which it is supposed to arise, as well as that of the contract (in which it originated) between the Western Union Company and the National Bell Company, was to accomplish a result which the law forbids. In other words, it was to effect precisely what has occurred—the establishment of a system of telephone lines and exchanges to carry telegraphic messages as well as others, which should be so conducted as to confer a monopoly on one telegraph company. Had the owner of the patents come to Delaware and undertaken to do what has been done, it can scarcely be questioned that its act would have been unlawful. And yet, this is substantially what has occurred. The owner has effected it through the instrumentality of a license. The respondent has done what the owner authorized and required.

It is urged, however, that the Western Union Company is not a mere licensee of the Bell Company, but something more; that prior to contract with that company it was the exclusive owner of certain patents under which it might have applied the telephone to its own exclusive use in carrying telegraphic messages; that the effect of its contract was to leave its right to do this unimpaired, and that the subsequent arrangement with the respondent for carrying its messages is simply the exercise of this right—of which no one can justly complain.

This statement is defective in several particulars. First, it is not true that the Western Union Company was originally the owner of patents which enabled it to apply the telephone to its use. Its patents, as conceded in the argument, were mainly, if not exclusively, for improvements on the Bell invention, which could not be used without license from the Bell Company; second, it parted absolutely with these patents, and took a license, not under them alone, but also under the former patents of the Bell Company. It is, therefore, a licensee, and nothing more. But this fact—that it is simply a licensee—is not of essential importance. The difficulty encountered does not arise out of it, but out of the circumstances that the Western Union Company did not employ its rights in the man-

ner above indicated. Had it done so, and thus kept its business and interest distinct and separate from that of subsequent licensees, by establishing its own system of lines and exchanges, and confining such subsequent licensees to the transmission of individual messages, this controversy might, and doubtless would not have arisen. Instead, however, and no doubt to avoid the expense attending it (which would have possibly rendered the scheme impracticable) the Western Union Company sought by the means devised and employed to secure an advantage over other similar companies, by obtaining a monopoly in the systems and business of subsequent licensees. In other words, they contracted with these licensees to carry their messages to the exclusion of all similar messages of others. This, as we have seen, the licensee could not lawfully do; and consequently, as before stated, the contracts by which it was sought to be accomplished are void.

The respondent supposes importance is attributable to the fact that the telephone is protected by patent, and cites *The Telegraph Company v. The Telephone Company*, 49 Conn., 352, in which it is said: "The relator insists that the respondent has offered its services to the public as a common carrier; that it has thereby made itself the servant of the public, and subjected itself to the operation of the general law which compels all such servants to serve applicants impartially, regardless of the limitations placed upon its use of the instruments. But the property of the American Bell Telephone Company in its patents is absolute and exclusive. It can rent or sell it in whole or in part, it can refuse to make or use, or to allow any one else to make or use the telephone described; or it can make and sell one and no more; and put such restrictions as it pleases upon the time, place and manner of using that; and it was the privilege of the respondent to purchase from it even the most limited right to use one or more of the instruments, and it is not in the power of the courts either to enlarge or diminish the right." This statement is mainly correct, but the deductions drawn from it—that one engaged in the business of carrying messages, who employs the telephone as a means of conveyance is exempt from the operation of the rules which govern common carriers and others engaged in like public employments—we cannot adopt.

Where one engages in such public busi-

ness, it is, in our judgment, of no consequence whether the means or instruments whereby it is conducted are patented or not. It is the *business* that is regulated. A patent secures title to the thing patented, and its use, just as the law secures it to other descriptions of property. The owner need not apply the property of either description to such public employment, but if he does, the employment itself will be subject to the rules which the law has prescribed for its government, without respect to the means or instrument by which it is conducted.

We do not regard the Express Co. Cases, 117 U. S., 1, cited by the respondent, as applicable here. On the facts they were distinguishable from this case, and the exception which they establish to the general rules governing common carriers, is not likely to be enlarged. The history of these cases—the division of the courts over them and the opinion of the several circuit courts in which they originated, do not, we think, leave this in doubt.

It would be unprofitable to extend the discussion. The decisions of the several State courts (in cases involving the same question) and their citation with approval by the Supreme Court of the United States are virtually conclusive. See Chesapeake & Potomac Tel. Co. v. B. & O. Tel. Co., 66 Md., 399; B. & O. Tel. Co. v. Bell Teleph. Co., 23 Fed. Rep., 539; Ohio, ex rel. Tel. Co., v. Bell Teleph. Co., 36 Ohio, 296; State, ex rel. Tel. Co., v. Bell Telph. Co., 22 Alb. L. J., 363; Union Tel. Co. v. New England Telph. Co., 17 Atl. Rep., 1071; Louisville Transfer Co. v. Telph. Co., 1 Ky. L. J., 144; Union Tel. Co. v. State, ex rel. Falley, 118 Ind., 194; Teleph. Co. v. New England Tel. Co., 6 Rwy. and Corp. L. J., 149; Budd v. State of New York, (not yet reported), U. S. Supreme Court.

The judgment of the Circuit Court is affirmed.

THE docket of a Dakota justice contains the following entry:

Mapes v. Wait, action for marriage. The parties to this action appearing before me this 10th day of May, 1880, and having taken the oath prescribed by law, were by me adjudged to be duly married. The said Mapes resides on the northeast quarter of section 10 in this township, and the said Wait resides on the southeast quarter of section 8; but they did to me on oath declare their intention of making their future home on said section 10. — Justice of the Peace.

—Green Bag.

Supreme Court of the District of Columbia, IN GENERAL TERM.

IN RE STEPHEN FAULDAN.

A defendant charged with the offense of petty larceny is entitled to a trial by jury. This case comes within the ruling of the court at the present term in the case of Addison Day and in the case of Herzog.

No. 165. Habeas Corpus Docket. Decided March 7, 1882.
The CHIEF JUSTICE and Justices Cox and JAMES sitting.

Mr. C. H. ARMES for the United States.
Mr. GEO. E. PREVOST for relator.
CHIEF JUSTICE BINGHAM delivered the opinion of the court:

The relator was convicted of petty larceny and was clearly entitled to a trial by jury, which he did not have and could not get at the time that he was tried in the Police Court. It is claimed by counsel for the Government that petty larceny is one of the petty offenses that existed at the time of the adoption of the Constitution, in which case the defendant was not entitled to a trial by jury. The offense of petty larceny was never regarded at common law as a petty offense, but on the contrary as a felony, and not long since was punishable by death in England. It was always triable by jury.

This case comes within the ruling of the court at the present term in the case of *in re Addison Day* and also within the ruling of the court in the case of Herzog, just decided.

The relator is discharged.

Supreme Court of the United States.

The Oregon Railway and Navigation Company, Plaintiff in Error, v. The Oregonian Railway Company, Limited.

Decided April 25, 1882.

In error to the Circuit Court of the United States for the District of Oregon.

The CHIEF JUSTICE: The judgment is reversed and the cause remanded upon the authority of The Oregon Railway and Navigation Company v. The Oregonian Railway Company, Limited, 130 U. S. 1.

For a man's house is his castle, *et domus sua cunque tutissimum refugium.* Coke.

Let us consider the reason of the case. For nothing is law that is not reason.

Sir John Powell.

Of Law there can be no less acknowledged, than that her Seat is in the bosom of God, her voice the harmony of the world; all things in heaven and earth do her homage, the very least as feeling her care, and the greatest is not exempted from her power.

Hooker.

WANTED—LAW REPORTER STOCK—Reply by letter only, stating what amount, lowest price for spot cash and address,

GEO. H. BOARDMAN,
Care LAW REPORTER OFFICE.

Legal Notices.

Rule of Court.

RULE 20. * * * Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

FIRST INSERTION.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of May, 1892.

E. L. Parker & Co., { No. 32,813. Law Docket, 33.
vs.
John Conway.

On motion of the plaintiffs, by Mr. Clarence A. Brandenburg, their attorney, it is ordered that the defendant, JOHN CONWAY, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to subject to the satisfaction of plaintiff's claim, certain credits of the defendant attached thereto.

By the court. M. V. MONTGOMERY, Justice, &c.
A true copy. Test: J. R. Young, Clerk,
19 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

William E. Blaine et al. { In Equity, 18,420.
vs.
Annie M. Baldwin et al.

John Ridout, the trustee in this cause, having reported the sale of the property herein decreed to be sold to John G. Slater for \$6,000, it is this 10th day of May 1892, ordered that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 10th day of June, 1892.

Provided a copy of this order be published in each of the three successive issues of the Washington Law Reporter published next after the date of the said order.

By the Court. A. C. BRADLEY, Justice.
A true copy. Test: J. R. Young, Clerk.
19 By M. A. Clancy, Asst. Clerk.

[Filed May 10, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Robert M. Bell { In Equity, No. 12,678.
vs.
Allen Dani et al.

John Ridout, the trustee in this cause, having reported the sale of the real estate therein described to Bartow L. Walker, for \$200, it is ordered this 10th day of May, 1892, that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 10th day of June, 1892.

Provided a copy of this order be published in each of the three successive issues of the Washington Law Reporter published next after the date of said order.

A. C. BRADLEY, Justice.
A true copy. Test: J. R. Young, Clerk.
19 By M. A. Clancy, Asst. Clerk.

[Filed May 10, 1892. J. R. Young, Clerk.]

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 7th day of May, 1892.

Arthur E. Bateman et al., Complainant,

vs.

Carrie S. Plumb, Executrix and Legatee, and Amos H. Plumb, Executor of Preston B. Plumb, deceased, Amos H. Plumb, Mary Plumb, Ruth Plumb (a minor), Carrie Plumb (a minor), Preston Plumb (a minor), all heirs-at-law of Preston B. Plumb, deceased, and Arthur M. Plumb, William J. Plumb, Ellen Plumb, Mary Edwards, David Plumb, Carrie S. Plumb, legatees under the Last Will and Testament of Preston B. Plumb, deceased, Defendants.

In Equity. No. 12,680.

On motion of the complainants by H. H. Wells and Enoch Totten, their solicitors, it is ordered that the defendants Carrie S. Plumb, executrix and legatee, and Amos H. Plumb, executor of Preston B. Plumb, deceased, Amos H. Plumb, Mary Plumb, Ruth Plumb (a minor), Carrie Plumb (a minor), Preston Plumb (a minor), all heirs at law of Preston B. Plumb, deceased, and Arthur M. Plumb, William J. Plumb, Ellen Plumb, Mary Edwards, David Plumb, Carrie S. Plumb, legatees under the last will and testament of Preston B. Plumb, deceased, cause their appearance, respectively, to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to cause to be sold, and to enforce a creditors' lien of the complainants, upon the real estate and the interests in real estate situated in the District of Columbia, owned, at the time of his death, by Preston B. Plumb, late of Emporia, in the State of Kansas, a citizen of said State, now deceased, who was a non-resident of this District, who departed this life without personal property sufficient to pay his just debts nor the debts due from him to the complainants, and to obtain discovery from the defendants, representatives of the deceased, of all other property, real, personal and mixed of which the said Preston B. Plumb died seized.

19 A. C. BRADLEY, Justice.
True copy. Test: J. R. Young, Clerk, &c.
By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business,
May 6th, 1892.

In the matter of the estate of JANE W. MICHEL, late of the District of Columbia, deceased.

Application for the probate of the last will and testament and for letters of administration on the estate of the said deceased, has this day been made by Susan M. Taliaferro.

All persons interested are hereby notified to appear in this court on Friday, the 3rd day of June next, at one o'clock p.m., to show cause why the said will should not be proved and admitted to probate and letters of administration on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in THE WASHINGTON LAW REPORTER previous to the said day.

By the court. A. C. BRADLEY, Justice.
Test: L. P. WRIGHT.
Register of Wills for the District of Columbia.

19 No. 4976. Ad. Doc. 17. J. Thomas Sothonor, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

May 10th, 1892.

In the case of John J. Wilmarth, administrator of CORDIAL STORRS, deceased, the administrator aforesaid has, with the approval of the court, appointed Friday, the 10th day of May, A. D. 1892, at 1 o'clock p.m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the administrator aforesaid will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: L. P. WRIGHT.
Register of Wills for the District of Columbia.
16 No. 4867. Adm. Doc. 16.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business,
May 6th, 1892.

In the matter of the estate of George Thwaites late of Washington, D. C., deceased.

Application for the probate of the last will and testament and for letters testamentary on the estate of the said deceased, has this day been made by THE WASHINGTON LOAN AND TRUST COMPANY, executor.

All persons interested are hereby notified to appear in this court on Friday the 10th day of June next, at one o'clock p. m., to show cause why the said will should not be proved and admitted to probate and letters testamentary on the estate of the said deceased should not issue as prayed.

Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star previous to the said day.

By the Court.

M. V. MONTGOMERY, Justice.

Test:

L. P. WRIGHT,

Register of Wills for the District of Columbia.
19 No. 4959. Ad. Doc. 17. [SEAL] John B. Larner, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business,
May 4th, 1892.

In the case of Wm. H. Hoeke, administrator of ALFRED C. PERRY, deceased, the administrator aforesaid has, with the approval of the court, appointed Friday, the 3rd day of June, A. D. 1892, at 1 o'clock p. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the administrator aforesaid will take the benefit of the law against them.

Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test:

Register of Wills for the District of Columbia.

19 No. 4838. Ad. Doc. 16. J. J. Wilmarth, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
The 9th day of May, 1892.

Mary B. Wilson }
v. } No. 13,761. Eq. Docket. 33.
Samuel C. Wilson. }

On motion of the plaintiff, by Mr. Campbell Carrington, her solicitor, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for an absolute divorce upon the ground of wilful and uninterrupted desertion, for more than eight years from the filing of the petition in this cause.

By the Court. A. C. BRADLEY, Justice, &c.

A true copy. Test: J. R. Young, Clerk.
19 By M. A. Clancy, Asst. Clerk.

[Filed May 9, 1891. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Caroline A. Shedd }
vs. } No. 13,445. Equity Doc. 32.
Frederick R. Slater et al. }

This cause coming on to be heard upon the petition of the trustee and the offer of Wormstedt & Bradley and the assent of the guardian ad litem it is this 5th day of May, 1892, ordered, adjudged and decreed that the said trustee be and he is hereby authorized to accept the said offer of \$3.75 per square foot for the remainder of the said property, payable one-fourth in cash and the remainder in two years with interest at the rate of 6 per cent. per annum, payable semi-annually, provided no objections to the said sale be filed on or before the 5th day of June, 1892.

And, provided further, that a copy of this order be published in the Washington Law Reporter once in each of three successive weeks prior to the said date.

A. C. BRADLEY, Justice.

True copy. Test: J. R. Young, Clerk, &c.
19 By M. A. Clancy, Asst. Clerk.

[Filed May 8, 1892. J. R. Young, Clerk.]

Legal Notices.**This is to Give Notice**

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of CHARLES D. DRAKE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 5th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 5th day of May, 1892.

ANNA P. WESTCOTT,
1416 20th St., n. w.

SECOND INSERTION.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business.

Washington, D. C., April 30th, 1892.

In the matter of the estate of JAMES MALONEY, late of Washington City, District of Columbia, deceased.

Application for the probate of the last will and testament and for letters testamentary on the estate of the said deceased has this day been made by Lucius W. Snook.

All persons interested are hereby notified to appear in this court on Friday the 27th day of April next, at one o'clock p. m., to show cause why the said will should not be proved and admitted to probate and letters testamentary on the estate of the said deceased should not issue as prayed.

Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter and New York Herald, previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: Register of Wills for the District of Columbia.
18 No. 4913. Ad. Doc. 17. J. Carter Marbury, Proctor

This is to Give Notice

That the subscriber of District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, letters of administration on the personal estate of DOUGLAS H. COOPER, late of Indian Territory, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of May, 1892.

SARAH M. MACDONALD,
1928 K street, n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business.

In re estate of MARY A. THOMAS, deceased.

No. 4955. Ad. Docket 17.

Application for the probate of the last will and testament and for letters testamentary on the estate of said deceased, has this 29th day of April, 1892, been made by Charles H. Cragin and John B. Thomas, the executors therein named.

All persons interested are hereby notified to appear in this court on Friday, the 27th day of May next, at one o'clock p. m., to show cause why said will should not be proved and admitted to probate and record and letters testamentary on the estate of said deceased should not issue as prayed.

Provided, a copy of this order be published once a week for three weeks in the Evening Star newspaper and the Washington Law Reporter, previous to said day.

A. B. HAGNER, Associate Justice.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

Holding a Special Term for Orphans' Court Business.

April 29, 1892.

In the matter of the estate of ANN COTTRINGER, late of the District of Columbia, deceased.

Application for letters of administration on the estate of the said deceased has this day been made by Eleanor B. Goodfellow.

All persons interested are hereby notified to appear in this court on Friday, the 27th of May next, at one o'clock p. m., to show cause why letters of administration on the estate should not issue as prayed.

Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star, previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
18 No. 4935. Admin. Doc. 17. George Peter, Proctor.

Legal Notices**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court Business, letters of administration on the personal estate of JOHN I. GREGG, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 22d day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of April, 1892.

HARRIET C. GREGG,
Cr. JOE. K. McCAMMON,
JAS. H. HAYDEN,
1420 New York Ave., n. w.

18 Jos. K. McCammon and Jas. H. Hayden, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

Holding a Special Term for Orphans' Court Business.

April 25th, 1892.

In the matter of the Estate of NATHAN BEACH CLARK, late of the District of Columbia, deceased.

Application for the probate of the last will and testament and for letters testamentary on the estate of the said deceased, has this day been made by Helen W. Clark, (the widow).

All persons interested are hereby notified to appear in this court on Friday the 27th day of May next, at one o'clock p. m., to show cause why the said will should not be proved and admitted to Probate and letters testamentary on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star previous to the said day.

By the Court.

A. B. HAGNER, Justice.

Test:

Register of Wills for the District of Columbia.

18 No. 4952. Ad. Doc. 17. Garvin & Miller, Proctors.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, letters testamentary on the personal estate of CHARLES W. FIELD, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 29th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of April, 1892.

CHAS. W. FIELD, Jr., Executor,
12 St. Paul street,

18 Chas. W. Field, Proctor. Baltimore.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, letters of administration on the personal estate of ELLA S. COCHRAN, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of March, 1892.

GEORGE A. KING,

18 George A. King, Proctor 1420 New York Ave.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, letters of administration on the personal estate of HELEN E. NOYES, late of the District of Columbia, deceased.

All persons having claims against the said deceased, are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of May, 1892.

J. C. NOYES,
W. U. Tel. Co.,
15th & F Sts.

18 J. C. Wilson, Proctor.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,**

Holding a Special Term for Orphans' Court Business.

April 29, 1892.

In the matter of the estate of GEORGIANA GOUGH, late of Georgetown, D. C., deceased.

Application for the probate of the last will and testament and for letters testamentary on the estate of the said deceased, has this day been made by Mayhem Plater.

All persons interested are hereby notified to appear in this court on Friday the 27th day of May next, at one o'clock p. m., to show cause why the said will should not be proved and admitted to probate and letters testamentary on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Washington Post, previous to the said date.

By the Court.

A. B. HAGNER, Justice.

Test:

L. P. WRIGHT,

Register of Wills for the District of Columbia.

18 No. 4955. Ad. Doc. 17. C. M. & H. S. Matthews, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

Holding a Special Term for Orphans' Court Business.

April 29, 1892.

In the matter of the estate of WILLIAM KICKMAN, late of Georgetown, D. C., deceased.

Application for the probate of the last will and testament and for letters testamentary on the estate of the said deceased, has this day been made by Maurice J. Adler.

All persons interested are hereby notified to appear in this court on Friday the 27th day of May next, at 11 o'clock a. m., to show cause why the said will should not be proved and admitted to probate and letters testamentary on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star, previous to the said day.

By the Court:

A. B. HAGNER, Justice.

Test:

L. P. WRIGHT,

Register of Wills for the District of Columbia.

8 No. 4960. Ad. Doc. 17. C. M. & H. S. Matthews, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphan's Court Business.

April 29, 1892.

In the case of James Fullerton, administrator of the estate of ROGER SULLIVAN, deceased, the administrator aforesaid has, with the approval of the court, appointed Friday, the 3d day of June, A. D. 1892, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day, and also in the Washington Evening Star.

Test:

A. B. HAGNER, Justice.

8 No. 4333. Ad. Doc. 16.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

April 29, 1892.

In the case of Richard J. Cross and George T. Blise, administrators c. t. a. of GEORGE HENRY BAYLY, late of Ireland, deceased, the administrators c. t. a. aforesaid has, with the approval of the court, appointed Friday, the 27th day of May A. D. 1892, at one o'clock p. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the administrators c. t. a. will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test:

L. P. WRIGHT,

Register of Wills for the District of Columbia.

18 No. 2904. Ad. Doc. 15. Leigh Robinson, Proctor.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

Henry T. Nicholson, vs. Equity, No. 18,790.

On motion of the plaintiff, by Mr. W. Woodville Fleming, her attorney, it is this 27th day of April, 1892, ordered that the defendant, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of the application to this court, is that the complainant by her bill seeks a decree to dissolve the bonds of marriage now existing between herself and the defendant Henry T. Nicholson, and the grounds of the said application are cruelty of treatment endangering life and health.

It is further ordered that this order be published in the Washington Law Reporter, and in the Washington Post for three successive weeks three times each week, and a copy of the petition be sent to the defendant.

A. B. HAGNER, Justice.
A true copy. Test: J. R. Young, Clerk.
18 By M. A. Clancy, Asst. Clerk.
[Filed April 27, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Henry Stewart et al., vs. John Stewart et al. { Equity, No. 18,201.

Messrs. J. H. Raiston, Irving Williamson, and L. Cabell Williamson, trustees appointed to make sale of the real estate described in the above entitled cause, having reported that they have sold the part of lot 10, square 428 Washington, D. C., specifically described in the bill of complaint in the above entitled cause to Sarah E. and Elizabeth A. Moore for the sum of nine thousand nine hundred dollars (\$9,900), it is this 28th day of April, A. D. 1892, adjudged, ordered and decreed, that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 28th day of May, A. D. 1892.

Provided that a copy of this decree be published in the Washington Law Reporter once in each week for three successive weeks prior to said date.

A. B. HAGNER, Justice.
A true copy. Test: J. R. Young, Clerk.
18 By M. A. Clancy, Asst. Clerk.
[Filed April 28, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business.

Washington, April 28th, 1892.
In the case of John Mullen, administrator of MARK TYRRALL, deceased, the administrator aforesaid has, with the approval of the court, appointed Friday, the 27th day of May, A. D. 1892, at one o'clock p. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: L. P. WRIGHT,
18 Register of Wills for the District of Columbia.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business.

April 26th, 1892.
In the case of Lucy M. Hunter, executrix of MARY CLARE PANELL, deceased, the executrix aforesaid has, with the approval of the court, appointed Friday, the 27th day of May, A. D. 1892, at one o'clock p. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the executrix will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: L. P. WRIGHT,
18 Register of Wills for the District of Columbia.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,**
Holding a Special Term for Orphans' Court Business.

April 2, 1892.

In the case of John M. Langston, administrator of SARA K. FIDLER, deceased, the administrator aforesaid has, with the approval of the court, appointed Friday, the 3rd day of June, A. D. 1892, at one o'clock p. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT,
18 Register of Wills for the District of Columbia.
18 No. 2727. Ad. Doc. 18.

THIRD INSERTION.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of JAMES F. BADEN, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 29th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of March, 1892.
MARGARET R. BADEN,
17 MacNulty & Johnson, Proctors. 412 L St., n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business.

April 28th, 1892.

In the case of Chapin Brown, Ellen Brown and William H. Brown, administrators c. t. a. of ABSALOM BROWN, deceased, the administrators c. t. a. aforesaid has, with the approval of the court, appointed Friday, the 20th day of May, A. D. 1892, at one o'clock p. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the administrators c. t. a. will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Washington Post previous to the said day.

Test: L. P. WRIGHT,
17 No. 4389. Ad. Doc. 16. Chapin Brown, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 26th day of April, 1892.

Doris Grue, Plaintiff, vs. Nettie Ortenstein et al. Defendants.

On motion of the plaintiff, by Mr. E. H. Thomas, her solicitor, it is ordered that the defendants, NETTIE ORTENSTEIN, HENRIETTA ROSENSTOCK, MAX MILLER, of London, HERMAN MILLER, TONI MILLER, JACOB MILLER, ALFRED MILLER and MAX MILLER of Chicago, cause their appearance to be entered hereon on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to substitute a trustee in the place of Nehemiah H. Miller, deceased, trustee named in in deed of trust on lots 1, 2, 19 and 20, Square 900, Washington City, District of Columbia.

By the Court. A. B. Hagner, Justice, &c.
True Copy. Test: J. R. Young, Clerk, &c.
17 By M. A. Clancy, Asst. Clerk.
Filed April 26, 1892: J. R. Young, Clerk.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court Business, letters of administration c. t. a. on the personal estate of THOMAS P. BELL, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of April, 1892.

WILLIAM MAYSE,
516 9th St., n. w.

17 JAS. F. HOOD, Proctor.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of LOUIS SCHMID, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 23d day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23d day of April, 1892.

EDWARD S. SCHMID,

17 Randall Hagner, Proctor. No. 712 12th St., n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court Business, letters of administration on the personal estate of JOSEPH DANIELS, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23d day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23d day of April, 1892.

AAA. M. DANIELS,
1900 14th St., n. w.

17

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of ALBERT BOULDIN, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23d day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23d day of April, 1892.

GEORGE R. WILLIAMS,
Lincolnsville, Bennington P. O. D. C.

17 W. K. Duhamel, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business,

April 22, 1892.

In the matter of the estate of CARL A. STOBESAND late of Georgetown, D. C., deceased.

Application for the probate of the last will and testament and for letters testamentary on the estate of the said deceased, has this day been made by Elise Stobesand.

All persons interested are hereby notified to appear in this court on Friday, the 20th day of May next, at one o'clock p. m., to show cause why the said Will should not be proved and admitted to probate and letters testamentary on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court.

A. B. HAGNER, Justice.

Test:

L. P. WRIGHT,

Register of Wills for the District of Columbia.
17 No. 4949. Ad. D. 17. J. A. Maedel, Proctor.

Legal Notices**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**
Holding a Special Term for Orphans' Court Business.

April 22d, 1892.

In the matter of the estate of ZADOK WILLIAMS, late of the District of Columbia, deceased.

Application for the probate of the last will and testament and for letters testamentary on the estate of the said deceased, has this day been made by Rudolph Eichhorn.

All persons interested are hereby notified to appear in this court on Friday, the 20th day of May next, at one o'clock p. m., to show cause why the said will should not be proved and admitted to probate and letters testamentary on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: L. P. WRIGHT,

Register of Wills for the District of Columbia.

17 No. 4905. Ad. D. 17.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of ELIZABETH THWAITES, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 16th day April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of April, 1892.

THE WASHINGTON LOAN & TRUST CO.

17 John B. Larner, Proctor. By W. B. Robison, Sec'y.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

April 22d, 1892.

In the matter of the estate of ADELINE W. FAGUE, late of District of Columbia, deceased.

Application for the probate of the last will and testament of said deceased, has this day been made by Joseph R. Fague, husband, surviving.

All persons interested are hereby notified to appear in this court on Friday, the 20th day of May next, at one o'clock p. m., to show cause why the said will should not be proved and admitted to probate and record as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: L. P. WRIGHT,

Register of Wills for the District of Columbia.

17 No. 4926. Ad. D. 17. A. A. Birney, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 20th day of April, 1892.

Charles W. James. v. No. 18,745. Eq. Docket 83.

Margaret J. James.

On motion of the plaintiff, by Mr. Howard P. Okie, his solicitor, it is ordered that the defendant cause her appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of defendant.

The object of this suit is to obtain a divorce from the bond of marriage on the ground of adultery on the part of the defendant.

By the Court. A. B. HAGNER, Justice, &c.

True copy. Test: J. R. Young, Clerk, &c.

17 By L. P. Williams, Asst. Clerk.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of FEARNLIGH L. MONTAGUE, otherwise known as ALMA WOODLEIGH, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 22d day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of April, 1892.

WILLIAM H. VEERHOFF,

17 E. M. Cleary, Proctor. 1217 F St., n. w.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

Holding an Equity Court the 22d day of April, 1892.

MARIE HEINE et al., COMPLAINANTS, vs. FREDERICK HEINE et al., DEFENDANTS.

No. 18,525. Equity Docket 38.

Ordered that the sale made and this day reported by Reginald Fendall, Trustee in this cause, be ratified and confirmed, unless cause to the contrary be shown on or before the 22d day of May, A. D., 1892; Provided a copy of this order be inserted in the Washington Law Reporter and the Washington Post, once in each of three successive weeks before said last named day.

Said trustee states in his report that he has sold at private sale the westerly of the two tracts of land in the county of Washington, D. C., which were conveyed to William Heine, deceased, by William Little and wife, by deed dated December 10, 1862, recorded among the land records of said District in Liber J. A. S. 226, folio 260 et seq., containing 11.494 acres of land, at and for the sum of \$21,561.25.

A true copy. Test: J. R. Young, Clerk.
By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Walter W. H. Robinson vs. Annie M. Watson, et al.

In Equity. No. 13,575. Doc. 33.

Charles H. Cragin and Randall Hagner, trustees appointed by decree in this cause to sell certain real estate therein mentioned, to wit, lots 63 and 64 in Cragin and others' recorded subdivision of lots in square 132 in the city of Washington, having reported to the Court that they had sold said real estate to William Mayse, who afterwards assigned and transferred his purchase to Samuel R. Bond, at and for the sum of \$31,995.50, it is by the Court, this 22d day of April, 1892, ordered that the sale so made to Samuel R. Bond be and the same is hereby ratified and confirmed, unless cause to the contrary be shown on or before the 22d day of May, 1892; Provided a copy of this order be published once a week for three successive weeks in the Washington Law Reporter, previous to the last-mentioned date.

A true copy. Test: J. R. Young, Clerk.
By M. A. Clancy, Asst. Clerk.
17 Filed April 23, 1892: R. R. Young, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

William H. Nelson, vs. Ida E. Cole et al.

No. 13,765. Equity Doc.

William H. Sholes, the trustee herein, having reported to the court that he has sold to A. HEITMUELLER, the south fifteen feet of original lot No. 7 in square 994, in the City of Washington, District of Columbia, with improvements, for the sum of thirty-two hundred dollars, it is this 21st day of April, A. D., 1892, ordered that said sale be ratified and confirmed, unless cause be shown to the contrary on or before the 21st day of May, A. D. 1892.

Provided a copy of this order be published in the Washington Law Reporter, once a week for three successive weeks before said last mentioned date.

A true copy. Test: J. R. Young, Clerk.
By M. A. CLANCY, Asst. Clerk.
17

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

The 21st day of April, 1892.

The Capitol Hill Brick Company vs. Galen E. Green et al.

No. 18,808. Eq. Docket 38.

On motion of the plaintiff, by Mr. W. H. Sholes, its solicitor, it is ordered that the defendant, THE SOUTHERN BUILDING AND LOAN ASSOCIATION, cause its appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to enforce Mechanic's lien on lot No. 22 in Galen E. Green's subdivision of part of the "Girl's Portion" in the District of Columbia.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
By M. A. Clancy, Asst. Clerk.
17

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

Holding a Special Term for Orphans' Court Business.

April 22nd, 1892.

In the matter of the estate of BERNARD VITAL DAELEN, late of Berlin, Germany, deceased.

Application for ancillary letters of administration on the estate of the said deceased, has this day been made by Octavus Knight, of Washington, D. C.

All persons interested are hereby notified to appear in this court on Friday, the 27th day of May next, at 1 o'clock p. m., to show cause why letters of administration on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: L. P. WRIGHT.
Register of Wills for the District of Columbia.
17 No. 4546. Ad. D. 17. H. S. Knight, Proctor

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

John W. Burke et al. complainants.

vs.

William A. Maury et al. defendants.

On motion of the complainants, by Nathl. Wilson, Esquire, their solicitor, it is this twenty-sixth day of April, A. D. 1892, by the court in equity sitting, ordered that the defendants RICHARD W. MAURY, ROBERT W. MAURY, ALLEN MAURY, ISABELLE MAURY, SARAH MAURY, PORTIEUX ROBINSON and ANNIE ROBINSON, his wife, JAMES L. MAURY, WILLIAM M. HILL, LEWIS HILL, JAMES L. HILL, ISABELLE M. HILL, M. S. QUARLES, and NANNIE QUARLES, his wife, JOHN L. WHITE, WALKIE HILL, RICHARD C. HILL, JANE RICHMOND, ANNIE PERRIN KEMP, and MAURY KEMP cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

It is further ordered that a copy of this order be published once a week for three successive weeks before the said rule-day in the Evening Star and in the Washington Law Reporter.

This suit has for its object the confirmation of the sale under the final decree in Equity cause No. 12,641, of part of lot "A" in square 452, in the city of Washington, District of Columbia.

True copy. Test: A. B. HAGNER, Asso. Justice.
J. R. Young, Clerk.
By M. A. Clancy, Asst. Clerk.
[Filed April 26, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

May Ann Bowen et al.)

vs.

Benjamin L. Bowen. } No. 18,277, Equity Doc.

The trustee herein, Andrew B. Duvall, having reported the sale of the real estate in the proceedings mentioned for the sum of \$2,885, to Simon Oppenheimer, and the said purchases having complied with the terms of sale, according to the modifications thereof stated in said report, it is, by the court, this 23d day of April, A. D. 1892, ordered that the said sale, upon modified terms aforesaid, be ratified and confirmed unless cause to the contrary be shown on or before the 23d of May, A. D. 1892.

Provided a copy of this order be published once a week for three successive weeks prior to the said date in the Washington Law Reporter.

True copy. Test: A. B. HAGNER, Justice.
J. R. Young, Clerk.
By M. A. Clancy, Asst. Clerk.
Filed April 28, 1892. J. R. Young, Clerk.

This is to Give Notice

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court Business, letters testamentary on the personal estate of MARTHA MOSS or MARTHA E. OWEN, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 26th day of April, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 26th day of April, 1892.

JAMES OWEN,
ANDREW F. TENLEY,
1004 Penna. Ave., n. w.
17 J. J. Waters, Proctor.

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[WEEKLY]

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WASHINGTON, D. C., - - - MAY 19, 1892

Equity Rule 67.

Supreme Court of the United States.

OCTOBER TERM—1891.

Ordered, That all parts of Rule 67 of the Rules of Practice for the Courts of Equity of the United States, as now existing, be, and the same are hereby, superseded, and the following rule is promulgated as such Rule 67:

67.

After the cause is at issue, commissions to take testimony may be taken out in vacation as well as in term, jointly by both parties, or severally by either party, upon interrogatories filed by the party taking out the same in the clerk's office, ten days' notice thereof being given to the adverse party to file cross-interrogatories before the issuing of the commission; and if no cross-interrogatories are filed at the expiration of the time, the commission may issue *ex parte*. In all cases the commissioner or commissioners may be named by the court or by a judge thereof; and the presiding judge of the court exercising jurisdiction may, either in term time or in vacation, vest in the clerk of the court general power to name commissioners to take testimony.

Either party may give notice to the other that he desires the evidence to be adduced in the cause to be taken orally, and thereupon all the witnesses to be examined shall be examined before one of the examiners of the court, or before an examiner to be specially appointed by the court. The examiner, if he so request, shall be furnished with a copy of the pleadings.

Such examination shall take place in the presence of the parties or their agents, by their counsel or solicitors, and the witnesses

shall be subject to cross-examination and re-examination, all of which shall be conducted as near as may be in the mode now used in common law courts.

The depositions taken upon such oral examination shall be reduced to writing by the examiner, in the form of question put and answer given; provided, that, by consent of parties, the examiner may take down the testimony of any witness in the form of narrative.

At the request of either party, with reasonable notice, the deposition of any witness shall, under the direction of the examiner, be taken down either by a skillful stenographer or by a skillful typewriter, as the examiner may elect, and when taken stenographically shall be put into typewriting or other writing; provided, that such stenographer or typewriter has been appointed by the court, or is approved by both parties.

The testimony of each witness, after such reduction to writing, shall be read over to him and signed by him in the presence of the examiner and of such of the parties or counsel as may attend; provided, that if the witness shall refuse to sign his deposition so taken, then the examiner shall sign the same, stating upon the record the reasons, if any, assigned by the witness for such refusal.

The examiner may, upon all examinations, state any special matters to the court as he shall think fit; and any question or questions which may be objected to shall be noted by the examiner upon the deposition, but he shall not have power to decide on the competency, materiality, or relevancy of the questions; and the court shall have power to deal with the costs of incompetent, immaterial, or irrelevant depositions, or parts of them, as may be just.

In case of refusal of witnesses to attend, to be sworn, or to answer any question put by the examiner, or by counsel or solicitor, the same practice shall be adopted as is now practiced with respect to witnesses to be produced on examination before an examiner of said court on written interrogatories.

Notice shall be given by the respective counsel or solicitors to the opposite counsel or solicitors, or parties, of the time and place of the examination, for such reasonable time as the examiner may fix by order in each cause.

When the examination of witnesses before the examiner is concluded, the original depositions, authenticated by the signature of

the examiner, shall be transmitted by him to the clerk of the court, to be there filed of record, in the same mode as prescribed in section 865 of the Revised Statutes.

Testimony may be taken on commission in the usual way, by written interrogatories and cross-interrogatories, on motion to the court in term time, or to a judge in vacation, for special reasons, satisfactory to the court or judge.

Where the evidence to be adduced in a cause is to be taken orally, as before provided, the court may, on motion of either party, assign a time within which the complainant shall take his evidence in support of the bill, and a time thereafter within which the defendant shall take his evidence in defense, and a time thereafter within which the complainant shall take his evidence in reply; and no further evidence shall be taken in the cause, unless by agreement of the parties, or by leave of court first obtained, on motion for cause shown.

The expense of the taking down of depositions by a stenographer and of putting them into typewriting or other writing shall be paid in the first instance by the party calling the witness, and shall be imposed by the court, as part of the costs, upon such party as the court shall adjudge should ultimately bear them.

Promulgated May 2, 1892.

Supreme Court of the United States.

The Northern Pacific Railroad Company, plaintiff in error, v. Dominick Amato.

In error to the United States Circuit Court of Appeals for the Second Circuit.

Decided April 11, 1892. [Abstract.]

Mr. Justice BLATCHFORD delivered the opinion of the Court:

Suit for damages on account of the loss of a leg by means of being run over by the defendant's engine. Judgment for plaintiff below \$4,059.76; affirmed by the Court of Appeals, and brought here on writ of error. Plaintiff moves to dismiss the writ of error and affirm the judgment.

Held, that this court has jurisdiction under Act of March 3, 1891, 26 Stat., 826.

That the judgment of the Circuit Court of Appeals must be affirmed under clause 5, rule 6, of this court.

That the question of the plaintiff's negligence was one of fact, and was plainly submitted to the jury.

That it was a question for the jury to determine, whether or not it was negligence on the part of the plaintiff not to keep a lookout for a coming engine, in view of the assurance from the boss that there was none to come.

Judgment affirmed.

Book Review.

CONTRACTUAL LIMITATIONS, including Trade Strikes and Conspiracies, and Corporate Trusts and Combinations. By CHARLES A. RAY, L. L. D., of the New York bar, ex-Chief Justice of the Supreme Court of Indiana. Rochester, N. Y.: THE LAWYERS' CO OPERATIVE PUBLISHING CO., 1892.

We extract the following from the Preface: "Whatever contract conflicts with the moral sentiment of the times, or contravenes any established existing interest of society, social, commercial, or political, is void, as against public policy. By this test must all Contracts, Trade Agreements and Strikes, and all Corporate or Partnership Trusts and Combinations be judged. It is the purpose of this work to bring them all to this judgment."

The book contains 514 pages, including a table of contents, table of cases, appendix, and index; and the foot-note citations are quite full.

Judge Ray has gathered about all the law that is to be found relating to the various branches of his new work, and arranged the same in convenient form. We bespeak for this excellent work the liberal patronage which it deserves.

FACETLE.—A good story is gotten off on the legal profession, which runs about as follows:

In a certain community a lawyer died who was a most popular and worthy man; and among other virtues inscribed upon his tombstone was this: "A lawyer and an honest man."

Some years afterward a Farmer's Alliance convention was held in the town; and one of the delegates, being of a sentimental turn, visited the "silent city," and in rambling among the tombs was struck with the inscription: "A lawyer and an honest man."

He was lost in thought, and when run upon by a fellow hayseed, who, noticing his abstraction, asked if he had found the grave of a dear friend or relative, said: "No, but I am wondering why they came to bury these two fellows in the same grave."—*Green Bag.*

**Supreme Court of the District of Columbia,
IN GENERAL TERM.**

**OTIS F. PRESBREY AND FRANK M.
GREEN**

v.
EFFIE H. KLINE.

1. The bill seems to proceed upon an erroneous assumption of law, that the defendant, by virtue of her contract of sale of the land, was under a legal obligation to correct any defects in her title, and that they had a right to claim damages from her for not doing so. We do not understand that to be the effect of a sale at common law.
2. In the ordinary sale of land there is no such thing as an implied covenant of warranty, so that if the title proves defective the purchaser can recover damages as for a breach of warranty.
3. There is an implied condition in such sale that the title shall be good; otherwise, the buyer may simply decline to take the land, and may recover his deposit if he has made one; and that is the whole consequence of the defect in the title.
4. When the complainants wrote to the defendant's agent, saying, "We demand the deposit, and we will not comply with the terms of the contract," they thereby abandoned the sale, the sale ceased to exist, the land remained the property of Mrs. Kline, and the complainants could only demand the deposit of \$5,000, provided they had a right to abandon the sale.
5. The complainants could not say, because they failed to recover their deposit money, or because she refused, rightly or wrongly, to pay back to them their deposit money, that they would revive the contract to which they had put an end.
6. The complainants brought their suit to recover the deposit money on the ground that the title was defective, thereby repudiating the contract, and while that suit is pending, and it is still pending, they bring this suit for the specific performance of the contract. The two remedies are absolutely inconsistent.
7. It is true that one party cannot rescind the contract without the consent of the other, but that rule is for the benefit of the injured party and not of the other.
8. The only proper offer of performance by the complainants would be an unconditional offer to take the property and pay the money. The complainants have not made such an offer.
9. The claim of the complainants for the return of the \$5,000 deposit alone is no ground for the interference of a court of equity.

In Equity. No. 12,160. Decided April 25, 1892.

The CHIEF JUSTICE, Justices COX and JAMES sitting.

Messrs. H. H. WELLS and SHEILA-BARGER & WILSON for complainants.

Mr. W. F. MATTINGLY for defendants.

Mr. Justice COX delivered the opinion of the Court:

I am requested to deliver the opinion of the court in the case of Presbrey & Green against Effie H. Kline, whose maiden name was Ober. On the first of April, 1887, the defendant, by her agent, one Mrs. Baker,

agreed to sell to the complainants a tract of land known as Cliffbourne, for the price of \$110,000. The evidence of the agreement was contained in a receipt signed by Mrs. Baker, a receipt for \$5,000 as a deposit on account of this purchase, the further sum of \$10,000 to be paid within 30 days, on delivery of a good and sufficient deed, with perfect title, satisfactory to the Real Estate Title Insurance Company, to such person or persons as said Presbrey & Green shall designate; and the receipt then goes on to name the different installments to be paid, and further describes the application to be made of each payment, partly to the amount due the defendant and partly to a prior incumbrance of \$40,000. It also provides that if the title cannot be made to a certain fraction of an acre, there shall be an allowance made for the same, to be deducted from the purchase money. The concluding clause of this paper is, that if the Real Estate Title Insurance Company of the District of Columbia shall report the title imperfect, the \$5,000 shall be returned to the said Presbrey & Green, otherwise to be forfeited if the terms of sale are not complied with.

On the 30th of November, 1889, Presbrey & Green filed their bill for the specific performance of this contract, and they allege that the complainants have been at all times ready and willing to perform all the conditions of said contract which were to be performed by them, and to take said property and pay the agreed price therefor, according to the true intent and purpose of said agreement, but the defendant will not perform her part of the contract, but has refused and still refuses to deed the property to the complainants or either of them, or to perfect the title thereto, or remove the imperfection in the title. It then goes on to allege that the defendant would not procure a perfect title to the said premises, and further shows that the title was examined by the Real Estate Title Company, and mentions about a dozen supposed defects in the title, which remain to be cured, and alleges that by reason of these things the defendant has not fulfilled her agreement, whereby the complainants have been unable to secure or obtain a good and valid title to the said estate known as Cliffbourne, which is of great value, to wit: of the value of \$250,000, as hereinbefore stated, and have thereby suffered great and irreparable injury.

And they further say, that the said sum of \$5,000 has not been returned to them, but

they have been unjustly kept out of the same and deprived of the use of the same wrongfully, and which sum and interest thereon is a charge and lien upon the said premises known as Cliffbourne.

They then pray that the agreement entered into be specifically performed by the defendant, and that said defendant be decreed to convey *by good and sufficient deed a good and valid title, free and discharged of all taxes, liens, and encumbrances to said title, excepting the trust of \$40,000*, and that she shall be required to pay the cost and charges incurred by the complainants; and they then ask as an alternative relief, if she cannot make a good title, that she be required to return to them the sum of \$5,000 deposited, and as a further alternative relief, damages for the non-performance of her contract.

The defendant, in her answer, admits that Mrs. May Cole Baker signed the memorandum set out in the complainants' bill.

She denies that she undertook to make a perfect title and denies that the title is imperfect, except as to the fraction of an acre, and goes on to say that the complainants undertook to have the title examined, and that they purposely neglected to have it reported upon, and formally refused to carry out the alleged contract, abandoned all rights thereunder, surrendered possession of said property, and demanded the return of said \$5,000.

She says that, pending this examination of title, the complainants placed said property in the hands of said Fitch, Fox & Brown for sale, and she believes and avers that, being without means to pay said \$10,000 in cash, due July 1, 1887, and to meet the first note for \$10,000, which if given would become due on December 1, 1887, together with interest for six months on \$95,000, they expected that said real estate agents would make a sufficient number of sales of lots to warrant their entering upon the completion of said alleged contract of purchase, and to that end delayed report upon title to said property until, finding that the anticipated sales were not made and they would be unable to make said cash payment, they concluded to abandon their enterprise, procured a report of alleged imperfections in said title from an employe of said title company, surrendered possession, and, as above stated, demanded a return of said \$5,000, and she says she has since arranged to sell to other parties.

She denies that complainants have, ever since the execution of said alleged agree-

ment, been ready, willing and prepared at all times to complete and purchase on their part, and she denies the right of the complainants, after abandoning said alleged contract and waiting two years, until said property has greatly enhanced in value, to demand in a court of equity that she should be now required to convey said property and specifically perform said contract.

Then she sets out the correspondence between herself and the complainants, and alleges that they never procured a report that the title was imperfect from the Title Company.

Before examining the evidence, I would remark, that the bill seems to proceed upon one erroneous assumption of law, and that is, that the defendant, by virtue of this contract, was under a legal obligation to correct any defects in her title, and that the complainants had a right to claim damages from her for not doing so. We do not understand that to be the effect of a sale at common law. In the ordinary sale of land, there is no such thing as an *implied covenant of warranty*, so that if the title proves defective the purchaser can recover damages as for a breach of warranty. There is, it is true, an implied condition in such sale, that the title shall be good; otherwise, the buyer may simply decline to take it and may recover his deposit if he has made one; and that is the whole consequence of the defect in the title. So that all the allegations in the bill as ground for a claim for damage, for not perfecting the title, may be eliminated from the case.

Proceeding to the evidence: According to local usage, the complainants employed the Real Estate Title Insurance Company to investigate the title, as it is the right of the purchaser to always have that done by his own counsel, and Mr. Ridout, who was the vice-president of that company, at that time, proceeded to examine that property. He discovered various imperfections in the title and brought them to the notice of the defendant's attorney; and the latter, in turn, employed the Title Company to cure the supposed defects. By the middle of December, most of the apparent defects were corrected by deeds which remained in the possession of the Title Company, and in the month of March following, all these supposed defects were corrected by the deeds that were in the hands of the Title Company, and ready to be recorded at any moment. But on the 15th of December, 1887, Presbrey & Green addressed this letter to Mrs. Baker as the agent of the owner:

"Mrs. MAY COLE BAKER,
"Agent of Effie H. Ober."

"MADAME: In the matter of the contract with you under date of June 1st, 1887, with reference to the sale to us of the tract of land known as 'Cliffbourne' we hereby notify you that we demand the return of our deposit of five thousand dollars, and that we will not comply with the terms of that contract, the same having been annulled by the failure on your part to perform the conditions stipulated therein.

"(Signed) PRESBREY & GREEN."

Then on the 24th of the same month another letter was addressed from the same to the same, as follows:

"On the 15th instant we addressed and delivered to you a notice of our demand for a return of the five thousand dollars deposited with you for the sale to us of the tract of land known as 'Cliffburn' which contract provided for the performance on your part of certain conditions which you did not perform. We have no reply from you to that notice, and we now call your attention to it, and demand that you will at once return to us the said deposit, otherwise we shall institute proceedings to recover the same.

"Your immediate attention is called to this matter.

"(Signed) PRESBREY & GREEN."

Then on the 11th of February, 1888, another letter was addressed to Mrs. Baker as the agent of the owner, as follows:

"Mrs. MAY COLE BAKER,
"Agent of Miss Effie H. Ober:

"We have to call your attention to our notice of December 15, 1887, in which we demanded the return to us of the deposit under contract of June 1st, 1887, and to say that we cannot any longer allow you to delay compliance with that demand without taking legal steps in the matter. Will you please notify us at once what time we will hear from you.

(Signed) PRESBREY & GREEN."

Then on the 15th of March, 1888, another letter was received by Mrs. Baker, from Mr. Otis F. Presbrey for Presbrey & Green, as follows:

"Mrs. MAY COLE BAKER:

"As per agreement I send you the certificate in relation to defects in title to Cliff-

burn as of date of the 15th when we gave you notice to refund five thousand dollars deposited.

"OTIS F. PRESBREY,
"For Presbrey & Green."

Now it is necessary to explain what the evidence shows as to the certificate mentioned in this letter of March 15. The report upon this title was prepared and issued from the office of the Title Company in March, 1888, and that report set out the conveyances of record, as of the 15th day of December, 1887, and appended to it and constituting the last two pages of it was a list of the supposed defects in the title made out by Mr. Ridout. The paper sent by Presbrey to Mrs. Baker was simply the last two pages of this report, being Mr. Ridout's memorandum of these defects. It did not purport to give the position of the title at that time. It was nothing but the memorandum of the defects in the title, as of December 15, 1887, all of which had, in the meanwhile, been cured by those deeds in the possession of the Title Company. That letter Mrs. Baker replies to as follows:

"March 16, 1888.

"Mr. OTIS F. PRESBREY,

DEAR SIR: Yours of the 15th instant is received enclosing copy of certificate as to alleged defects in title to Cliffburn, signed John Ridout, under date of December 15, 1887. The contract, I believe, called for a report of the Real Estate and Ins. Company, and from facts within my knowledge it cannot make any such report as that in the copy you enclosed."

The explanation of this statement of Mrs. Baker's that the Title Company "cannot make any such report as that in the copy you enclosed," grows out of the fact that from her knowledge all of those defects had been cured, and therefore she states that "from facts within her knowledge it (the Title Company) cannot make any such report."

On the 15th of March, 1888, by Mr. B. F. Leighton, the attorney for Presbrey & Green, wrote Mrs. Baker as follows:

"Messrs. Presbrey and Green have placed in my hands the receipt for \$5,000 given and signed by you as the duly authorized agent of Effie H. Ober, bearing date June 1st, 1887, being a deposit on account of the purchase of Cliffbourne, situate in the county of Washington, District of Columbia, and containing the memoranda of an agreement made by you on behalf of the

said Effie H. Ober for the sale of the said tract of land.

"One of the stipulations of the contract was that the title to said real estate was to be perfect and satisfactory to the Title Insurance Company of said District, with the provision that if the said Title Insurance Company should report the title to be bad, that then the said sum of \$5,000 deposited on account of said purchase aforesaid should be returned to them.

"The report of said company on said title is before me and shows serious defects therein, and the said sum of \$5,000 is therefore, by the terms of said contract to be returned to said Presbrey and Green, and I hereby, on their behalf, make demand for the same of you as the agent of the said Effie H. Ober. Hoping to hear from you without delay, I remain."

This letter Mrs. Baker replied to on the 19th of March, 1888, four days afterwards, as follows :

"Yours of the 15th instant is rec'd relative to Cliffbourne. I would like to see the report of the Real Estate Title Ins. Company, to which you refer, as I was not aware it had reported.

"MAY COLE BAKER."

Mrs. Baker testifies that no further communication passed between the parties, but the answer to her application to see the report of the Title Company was a suit brought by the complainants for the recovery of the \$5,000, and nothing else passed between the parties until November 30, 1889, twenty months afterwards, when this bill was filed. Meanwhile the defendant, through her agent, employed the Real Estate Title Company to examine the title on her own account,—I presume with reference to the new sale alleged in her answer. The company reported the title to be good, as it stood twenty months before, in March, 1888, the several deeds, which had been obtained and which were in the possession of the Title Company having been recorded in the office of the Recorder of Deeds.

Now, one of the contentions on the part of the complainants seems to be, that inasmuch as the defendant failed to pay back the \$5,000 deposit, the complainants had a right to fall back upon the contract of sale, and insist upon its specific performance.

The case of Barry v. Coombe, 1st Peters, 640, was relied on in this connection.

In that case, it appeared that Barry was indebted to Coombe to the amount of over

\$9,000, and Coombe agreed to purchase certain real estate from Barry at about \$7,500 and credit it on his account. An account was stated between the parties, in which this credit was given. But Barry failed to convey, and Coombe wrote to him, saying :

"It is now time that I should have your final answer, whether you will execute the contract made between us, for the conveyance of your moiety of the house, &c. * * * I must notify you, that if you persist in refusing to comply with the terms of your contract, * * * I shall hold you accountable in money, for the whole balance due me according to our settlement, and shall merely hold the house, &c., which you were to have conveyed to me, as collateral security for the entire balance ascertained by that settlement, &c."

Coombe having filed a bill for a specific performance of the contract of sale, Barry claimed that the above letter was an abandonment of that contract and that Coombe thereby signified his intention to fall back on his original claim of indebtedness.

The Supreme Court said :

"Nothing but the equivocal conduct of Barry, on the receipt of that letter, * * * deprives him of the benefit of this defence. To have availed himself of it, he should have adopted the alternative offered him; and as the only unequivocal proof of it, should have tendered to Coombe the amount justly due him, after extracting that item from the account. This he did not do, and it was too late, after the bill filed, to claim the benefit of a right thus gone by, at least without paying unto Coombe the amount which would have been due to Coombe upon a mutual relinquishment of the bargain."

If, in this case, these complainants had said to the defendant, "either convey that land to us or pay back that \$5,000," and she had remained silent, then the court might well say that the complainants might withdraw that offer, and still assert title to the land. But this was not so. Nothing could be stronger than their language. They did not say "Give us the land or our money," but they said "We demand the deposit, and we will not comply with the terms of the contract." It was an abandonment of the sale. Now, either they had a right to do that, on account of the condition of the title, or they had not. Let us assume, in the first place, that they had the right, what was it necessary for them to do in

order to abandon or rescind the sale? Nothing was necessary but to declare so, and certainly they have done that as effectually as any language could do it. Nothing was necessary on the defendant's part. They did abandon or rescind the sale, and what was the effect of that, assuming now that it was a legal step on their part? The effect was that the sale ceased to exist. The land remained the property of Mrs. Kline, and they had only a demand for the return of the \$5,000. The contract could not be resuscitated by one of the parties without the consent of the other. The complainants could not say, because they failed to recover their money, or because she refused, rightly or wrongly, to pay back to them their money, that they would revive the contract, which was put an end to. It is perfectly plain, therefore, that the acts of the complainants, if they had a right to withdraw from the sale, had effectually destroyed and put an end to the contract of sale. The plain common sense of this matter is expressed in one of the cases cited in argument, the case of *Herrington v. Hubbard*, 33 Amer. Dec., 437, where, after the sale was made in this way, the purchaser sued for the recovery of the deposit money, and afterwards filed a bill for a specific performance. Meanwhile, the owner had sold to another person.

The court said: "He (Hubbard) first institutes his action of covenant to recover damages for the non-performance by Herrington of his portion of the agreement, and afterwards brings his action to recover back the consideration paid. We think this is sufficient evidence of his determination to treat the contract as rescinded, and that it is equivalent to an express disaffirmance of it, which must be the legal intendment of his act; for he certainly could not recover back the consideration money paid, but on the ground of a disaffirmance. Herrington then had a right so to consider it, and was at liberty to treat and enter into a contract with Wright for a sale of the lands to him. * * * The doctrine of concurrent remedies is not disputed, but he surely could not proceed to recover back, in an action at law, the consideration money paid, which must be based on an actual or constructive disaffirmance of the contract; and also obtain a decree for the specific execution of a contract pronounced by a judgment at law disaffirmed."

Now, that is exactly what was done in the present case. The complainants brought

their suit for the deposit money on the ground that the title was defective, thereby repudiating the contract, and while that suit is pending, and it is still pending, they bring this suit for the specific performance of the contract. The two remedies are absolutely inconsistent.

Now, then, suppose, on the other hand, that the complainants were not justified in refusing to complete this contract of purchase on the ground of the imperfections of the title. Even here it is argued ingeniously that the complainants have a right to the relief sought.

The argument seems to fail in not discriminating between the rights of a party in fault and of a party not in fault. It seems to be this: one party cannot put an end to a contract without the consent of the other. Although these complainants notified Mrs. Kline that they would not perform the contract, she did not consent to release them and the contract remained in force, and the contract not being at an end, they had still a right to change their minds and claim its specific execution.

On page 10 of the brief, it is said, "the acceptance of one party is, however, as essential and indispensable to the rescission of the contract as the absolute refusal of the other to perform, and no abandonment results until there has been a clear and unambiguous acceptance by that other party." They recite also, Frey on Specific Performance, "Where one party to a contract absolutely refuses to perform his part of the contract, either before or after the hour for performing has arrived, the other party may accept that refusal, and thereupon rescind the contract." Now it is true that one party cannot rescind the contract without the consent of the other, but that rule is for the benefit of the injured party and not of the other. Would it not be absurd for a party to come into a court of equity and say, "It is true that I did not perform my contract, and absolutely refused to do it, but now I have changed my mind. I find it now for my benefit to enforce the contract?" I say that would seem to be absurd. It is elementary law that a party must show that he has always been ready and willing to perform his part of the contract and has made demand upon the other party to perform. What are the facts in this case? The defects were cured in March, 1887, and all the deeds curing those alleged defects were procured and delivered to Mr. Ridout, except one or two and they were to be pro-

cured in a few days, of which Mrs. Baker testifies that she notified Mr. Ridout before the notice of this suit was brought to her. The Title Company was the agent of the complainants up to the time, at least, of their report upon the title in March, 1888, and they had notice, and that was notice to their principals, the complainants. They had constructive notice, and we are also satisfied that they had actual notice, at that time, that the supposed defects in this title had been cured or would speedily be cured. That was the time when the complainants were bound to tender their performance. Four, I think, of the instalments of purchase money were overdue at that time, but, as we have already seen, not only they did not tender performance, but they absolutely refused to perform. No other communications passed between these parties until the bill was filed. The complainants never offered to perform, and, what is more remarkable, the bill itself does not do so in any proper sense.

They offer to perform in terms which amount to nothing more than a conditional offer. They say, "The complainants ask that the contract may be specifically performed by the defendant, the complainants being willing and now here offering to perform the same so far as it remains on their part to be performed, and that the said defendant be decreed to convey by a good and sufficient deed a good and valid title in fee simple to all of the said premises, free and discharged of all taxes, liens and imperfections in said title, except only the said deed of trust for \$40,000, which they are will willing to assume, and that the said defendant be required on her part to cause the said imperfections in said title to be removed;" which is equivalent to saying, "We offer to pay the money provided the court will compel the defendant to perfect her title," which the complainants have no power to insist upon, nor the court the power to compel. The only proper offer of performance would be an unconditional offer to take the property and pay the money. And where, as in this case, the complainants do not seem to have ever offered to perform their part of the contract, it would seem preposterous for them to ask the powers of this court to be exercised to compel the defendant to perform.

The case of Bashier v. Gratz, 6 Wheat., 529, is quite pertinent here. One Brashier had purchased certain land of Gratz, but had simply failed to pay the purchase

money, without repudiating his purchase. Gratz several times offered to convey upon receipt of the money due. About two years after the last offer the land suddenly rose in value from the agreed price of \$22.50 to \$80 per acre. Then Brashier filed his bill for specific performance against the heirs of Gratz, who had meanwhile died.

The Supreme Court said: "This then is a demand for a specific performance, after a considerable lapse of time, made by a person who has failed totally to perform his part of the contract; and it is made after a great change, both in the *title* and in the *value*, of that which was the subject of the contract, and by a person who could not have been compelled to execute his part of it, had circumstances taken an unfavorable direction. In such a case, we are of opinion that a court of equity ought to leave the parties to their remedy at law."

Here, too, the application is made after a change both in the *title* and the *value*; and here, too, the contract could not have been enforced against the complainants, because they had not signed any written memorandum of it. But we have the additional circumstance that they had distinctly repudiated the contract.

There are one or two other matters which I omitted to notice. There was a suggestion that the title was not made good because the deeds curing the defects were not placed on record and the report from the Title Company was confined to the title as it then appeared of record. Now, these deeds were put in the hands of the Title Company, for the purpose of being recorded, and could have been recorded at any moment. The refusal or omission of the defendant to carry through this contract, was, as I may so express it, aggravated on the part of the complainants, by their getting the certificate of the title which was dated so as to present simply the title of three months before and ignoring entirely the deeds which cured the defects, and which were then in the hands of the Title Company, the agent of the complainants. It only shows a more resolute determination on the part of the complainants not to comply with the terms of sale. There could not be a more emphatic refusal. Whether they had a right to rescind the sale or not, then, it seems plain that they had no right to ask specific performance in either case, and a decree for specific performance, *in their favor*, therefore, is out of the question. There is only one ques-

tion remaining. By the terms of this contract, as already shown, if the Real Estate Title Company should report the title as imperfect, the \$5,000 shall be returned to said Presbrey & Green, otherwise to be forfeited, if the terms of the contract were not complied with. If the Real Estate Title Company did make such report as this contract required, then these complainants have a right to have the \$5,000 returned to them. If they did not make such a report, then the complainants have not any right either at law or equity to have the money returned to them. A suit is now pending to determine that question, and it is a question proper to be determined in a court of law. The claim for the \$5,000 alone is no ground for the interference of a court of equity, and all that we can do is to leave the parties where they are now, and *affirm the decree of the Special Term, dismissing the bill, and leaving the complainants to prosecute their action at law.*

Supreme Court of the United States.

[Abstract.]

Freeman C. Dodge and Ellen A. Dodge, Appellants, v. L. W. Tulley, Trustee; Cornell University et al.

Appeal from the Circuit Court of the United States for the District of Nebraska.

Bill in equity to foreclose for interest on a trust deed and on a mortgage, both covering the same lands.

Answer admits execution of the papers, and alleges, among other things, that \$534 of the \$10,000 loan had never been paid to the defendants; and pleaded usury generally.

Decree in favor of complainants for full amount claimed, with \$1,000 allowance for attorney's fees.

On appeal to this court, Held, That 8½ per cent. was not unlawful interest in Nebraska, the statute of that State allowing 10 per cent. to be received. Comp. Stats. of Nebraska, p. 433, Ch. 44, Sec. 1.

That equity requires a rebate of interest on the amount paid to the borrower, not until June 8, whereupon the face of the paper's interest commenced to run from the 1st of the previous February.

That the attorney's fee must be reduced to \$500.

STOCK—As between vendor and vendee—Title to dividends.—As between vendor and vendee, a transfer of stock on the books of the company is not essential to perfect an equitable title in the vendee. Assignment and delivery of certificate passes title. The dividend belongs to the person entitled to the stock at the time it is declared. Gemmell v. Davis & Co., Ct. App. Md., March 16, 1892. Daily Baltimore Record, April 11, 1892.

Maryland Court of Appeals.

WILLIAM S. TAYLOR, JR., AND T. KELL BRADFORD

v.

DWIGHT D. MALLORY ET AL.

Decided April 7, 1892.

CHIEF JUSTICE MILLER, and Justices ROBINSON, IRVING, BRYAN, McSHEREY, and FOWLER sitting.

APPEAL from the Circuit Court of Baltimore City.

Chief Justice BRYAN delivered the opinion of the Court:

William S. Taylor and T. Kell Bradford filed a bill in Equity against Dwight D. Mallory, Oliver W. Miller, and Elizabeth H. Miller, his wife. It was alleged that Miller had made a deed of trust to John H. Handy for the benefit of his creditors, and that the complainants had become sureties on his bond for the faithful performance of his duties, and that the Circuit Court of Baltimore City duly assumed jurisdiction of the administration of the trust.

It was further alleged that Mrs. Miller had filed certain fraudulent claims against the trust estate; and that she and her husband had employed Handy, the trustee, as their attorney to prosecute these fraudulent claims, and that he prosecuted them until the creditors who opposed them withdrew their objections and permitted an auditor's account to be ratified and confirmed, which was allowed them. It was further alleged that the allowance of the claims and the order of the court ratifying the auditor's account with respect to them, were obtained by the fraud and collusion of Handy and Miller and his wife for the purpose of defrauding the creditors of the said Miller and the complainants; and that Handy failed to pay to Mrs. Miller the money allowed to her in the auditor's account; and that in a suit on the trustees' bond against Handy and the complainants a judgment was rendered against the defendants; and that on appeal it was affirmed by the court of appeals; that the judgment was entered to the use of Mallory, and that he has brought suit against the complainants and the sureties on the appeal bond; that Handy has departed from the State of Maryland, and no longer resides therein. It was further alleged that Miller and wife had permitted Handy to take and use the trust funds and misappropriate them. The prayer of the bill was for an injunction to restrain the defendants and each of them from taking any steps by suits or otherwise, to enforce the judgment against the complainants,

and for general relief. The defendants demurred, and on hearing the bill was dismissed. The complainants have appealed.

The demurrer presents to us simply the question whether the statements in the bill (supposing them to be true) entitle the complainants to relief in a court of equity. Fraud is in direct antagonism to the objects for which courts of justice are established. Whenever the law is unable to prevent or redress it, an instance is exhibited of imperfection in its powers and processes. A large proportion of the jurisdiction of equity consists in its power of dealing with frauds and their consequences.

While it would not be safe to say that it is able to penetrate all the disguises of deception and honesty, and defeat all their machinations, yet it has provided very ample means for giving relief and remedy in cases which are of most frequent occurrence, and it is continually adapting such powers as it possesses to the attainment of justice in other cases as they arise. But before any party can make a successful appeal to any tribunal, he must show that he has sustained some injury. Now, Handy's bond was responsible for the payment of all the moneys received from the trust estate, according to the distributions made by the auditor's report. It appears that the creditors received only a dividend of their claim; if the claims had been paid in full, and a surplus has been left remaining, it would have been awarded to the grantor in the deed of trust. If Mrs. Miller's claim had been rejected and disallowed, the result would have been that the dividend of the other creditors would have been increased; and if anything had remained after paying them in full it would have been awarded to her husband.

So the allowance of Mrs. Miller's claim does not increase the amount for which the bondsmen were liable; it only adds another person to the number of those among whom the amount is distributed. This affects the interest of the other distributees by making their dividend smaller; but how does it concern the bondsmen? They are responsible for the amount of the trust estate which Handy received; no more, no less. We do not think, therefore, that the bondsmen have any claim for relief under this head. We do not see the significance of the charge in the bill that Miller and wife "permitted the said Handy to take and use said trust funds and misappropriate them." His power to take the funds was conferred by the deed of trust; and his using and misappropriating them was the result of his own act and will, and could not be dependent on the permission of the Millers.

The using and misappropriation of the money (so far as the present case is concerned) consisted in his failure to pay Mrs. Miller's claim. We do not suppose that it is intended to charge that Miller and his wife induced Handy to refuse to pay Mrs. Miller, in order that she might have an opportunity of bringing suit against the complainants, and recovering the money from them. If this is the meaning of the bill of complaint, assuredly the charge ought to have been made in explicit terms.

The demurrer was properly sustained, and the decree must be affirmed.

Decree affirmed with costs.—Balt. Daily Record.

THE COURTS.

Supreme Court of the District of Columbia.

AT LAW—New Suits.

April 28, 1892.

32867. Chas. Shepard v. J. E. Lomax et al. Judgment of Justice Taylor. \$67.99.

32868. Jonas Rosenfeld, trading as S. Rosenfeld & Co. v. W. W. Horton. Account, \$377.17. Plffs. atty., L. Tobriner.

37869. Ferd. Sulzberger, trading as Schwarzchild & Sulzberger, v. C. C. Lefer. Account, \$171.36. Plffs. atty., W. A. McKenney.

32870. W. D. Campbell & Co. v. Thomas J. Staley. Note, \$508.61. Plffs. atty., A. B. Duval.

April 29.

32871. Jno. H. Cockrill, admir., of J. H. Cockrill, jr., v. The Inland & Seaboard Coasting Co., Peoples W. & N. S. Co., and Geo. H. B. White.

32872. Samuel Ghizzivani v. The B. & P. RR. Co. Damages, \$10,000. Plffs. attys., Chas. Bendheim and G. Hatley Norton.

32873. J. C. Schafer v W. G. Widmayer. Account, \$154.76. Plffs. atty., C. A. Brandenburg.

April 30.

32874. H. E. Hindmarsh et al. v. P. D. Vinson and R. M. Perry. Replevin. Plffs. atty., Mills Dean.

32875. Janeway & Co. v. Jno. Mahoney. Account, \$235.94. Plffs. atty., Chapin Brown.

32876. E. S. Schmid v. J. H. O'Donnell. Judgment of Justice Bundy. Plffs. atty., Randall Hagner.

32877. F. J. Dieudonné v. J. R. Brooks et al. Judgment of Justice Walter. \$62.67. Plffs. atty., C. A. Walter.

32878. M. W. Johnson et al. v. Florence Huntington Wright. Check, \$300. Plffs. atty., Saml. Maddox.

32879. The Hartford Silver Plate Co. (a corporation) v. A. A. Lawrence et al., formerly trading as Lawrence & Camalier. Note, \$100. Plffs. atty., Chapin Brown.

May 2.

32880. N. M. Matthews & Co. v. J. O. Vermillion. Account, \$168.55. Plffs. attys., Abert & Warner.

32881. Bernhard M. Cohen et al. v. Nathan Horn. Account, \$326.13. Pliffs. attys., Jno. B. Larner and W. G. Reed. May 3.

32882. Bananna Hodges v. A. J. Boyer et al. Account, \$150. Pliffs. attys., Morris & Hamilton.

32883. Oliver C. Black v. Ann Maisik. Ejectment. Pliffs. attys., J. J. Johnson and W. B. Todd. Defts. attys., Webb & Webb.

32884. F. L. Beach v. R. F. King. Damages, \$5,000. Pliffs. atty., J. McD. Carrington.

32885. James Edward Miller v. T. P. Jacobs. Damages, \$10,000. Pliffs. attys., Wolverton & Gies. Defts. atty., D. E. Cahill.

32886. W. H. Slater v. T. W. Widdicombe et al. Judgment of Strider, J. P. \$88.21.

32887. Mary J. Brody v. The D. C. and the Treasurer of the United States of America. Certiorari. Pliffs. attys., Cole & Cole.

May 4.

32888. F. L. Beach v. G. E. Rott. Damages, \$5,000. Pliffs. att., J. McD. Carrington.

32889. D. Longhran v. W. D. Staples. Judgment of Bundy, J. P., \$40.77. Pliffs. atty., Mills Dean.

32890. J. D. Kitch v. Wash. Danenhower. Damages, \$50,000. Pliffs. attys., Cole & Cole.

32891. A. B. Graham v. J. P. Finley. Account, \$400. Pliffs. atty., F. E. Alexander.

32892. C. H. Weser v. G. F. Lamborn et al. Judgment of O'Neale, J. P., \$36.95. Pliffs. atty., J. A. Clarke.

May 5.

32893. Francis Turvey v. The D. C. Certiorari. Pliffs. attys., Birney & Birney.

32894. C. F. Clarke v. The D. C. Certiorari. Pliffs. attys., Birney & Birney.

32895. J. A. Blundon v. B. Charlton et al. Account, \$6,987.50. Pliffs. atty., F. T. Browning.

—. The United States of America v. Anton Karl et al. Bond, \$20,000. Pliffs. atty., U. S. District attorney.

May 6.

32897. The Eureka Brick Machine Mfg'g Co., ex rel., Minaud S. Bowman v. Isaac P. Childs et al., surviving partners, etc. Account, \$3,500. Pliffs. attys., J. J. Weed & L. Abraham.

32898. Ashburne & Co., v. J. Dempsey. Account, \$111.45. Pliffs. atty., Walter A. Johnston.

May 7.

32899. W. F. Nash v. Lawrence Cavanaugh. Account, \$264.38. Pliffs. attys., Edwards & Barnard.

32900. W. F. Nash v. Wash Nailor. Account, \$166.05. Pliffs. attys., Edwards & Barnard.

May 10.

32901. Jno. H. Magruder v. Francis Dunlop. Note, \$249.38. Pliffs. atty., E. B. Hay.

32902. E. L. Parker & Co. v. Jno. Conway. Account, \$74.56. Pliffs. atty., C. A. Brandenburg.

32903. Dohan & Faith v. J. F. McElhone. Check and Due-bill, \$220. Pliffs. attys., J. A. Barthel and A. H. Bell.

32904. Jacob Blanner v. S. H. King. Replevin. Pliffs. attys., Wolf & Cohen.

32905. Geo. K. French v. James A. Bailey. Damages, \$500. Pliffs. atty., Howard P. Okie.

May 11.

32906. Elwood Brickett v. Nathan Horn. Account, \$204.90. Pliffs. atty., Edward M. Cleary.

32907. C. T. S. Brent v. The D. C. Certiorari. Pliffs. attys., Birney & Birney.

32908. F. R. Simpson et al. v. The D. C. Certiorari. Pliffs. attys., Birney & Birney.

32909. Mary R. Wight v. The D. C. Certiorari. Pliffs. attys., Birney & Birney.

32910. A. E. Glascock v. Geo. C. Ayres & Co. Note, \$250. Pliffs. atty., R. Byrd Lewis.

32911. J. Bamberg & Co. v. S. H. King. Account, \$370.06. Pliffs. attys., H. W. Garnett and D. S. Mackall.

32912. G. W. Cissell & Co. v. John E. Febrey. Note, \$132.11. Pliffs. atty., M. F. Chamblin.

IN EQUITY.—New Suits.

April 28, 1892.

13887. Supreme Commandery of the United Order of the Golden Cross of the World v. S. S. W. Haddaway et al. Interpleader. Com. sol., I. B. Linton.

13888. Employers' Liability Assurance Corporation v. W. E. Prall et al. Creditor's bill. Com. sol., C. A. Brandenburg.

April 29.

13889. Mamie E. Norment v. C. F. Norment et al. To declare a trust. Com. sols., Shellabarger & Wilson and Thos. P. Woodward.

13890. J. G. Craighead v. C. M. Kennedy et al. To substitute trustees. Com. sols., Ralston & Siddons.

13891. Westel Willoughby v. Brooke Mackall et al. For discovery and accounting. Com. sol., A. A. Birney.

13892. William Ebbitt alleged lunatic. Upon petition of Commissioners of D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazleton.

Corrected.

We undertook to publish the following notice last week, but it went to press without correction of the proof, and consequently a number of awkward typographical mistakes appeared in it:

REVIEW.

THE SO-CALLED RIGHT OF ASYLUM IN LEGATIONS. A consideration of recent international incidents. By ANDER PORTER MORSE, Washington, D. C.

This is a pamphlet which presents very concisely, upon this important subject—1st. The Law of Nations; 2d. The Principles and Practice of the United States; and 3d, The Position of Chili in this Regard. It is quite apparent that the article was called out by reason of the action of the Minister of the United States at Santiago, Chili, in protecting the deposed President of Chili within the Legation of the United States.

Mr. Morse cites freely by foot-notes the leading authorities with reference to such matters. His article is so brief that it may be read in half an hour, and is so clear in its statements that it can be appreciated and remembered.

The article is reprinted in pamphlet, from the Albany Law Journal of April 9, Vol. 45, No. 15.

WANTED—LAW REPORTER STOCK—Reply by letter only, stating what amount, lowest price for spot cash and address,

GEO. H. BOARDMAN,

Care LAW REPORTER OFFICE.

Legal Notices.**This is to Give Notice**

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of GEORGE G. CORNWELL, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 18th day of May, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of May, 1892.

ELIZA N. CORNWELL,

HENRY P. GILBERT.

21 Henry E. Davis, Proctor.

SECOND INSERTION.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

The 12th day of May, 1892.

Lillie E. Allen } v. No. 13,782. Equity Docket 33.
Johnson Allen.

On motion of the plaintiff, by Mr. E. B. Hay, her solicitor, it is ordered that the defendant, JOHNSON ALLEN, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is divorce for willful desertion and abandonment for the full and uninterrupted space of two years before filing this bill.

By the Court.

A. B. HAGNER, Justice, &c.

True copy. Test:

J. R. Young, Clerk, &c.

20 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 12th day of May, 1892.

Elia L. Castleman } vs. No. 13,852. Equity Docket 33.
Mary A. McGraw, et al.

On motion of the plaintiff, by Messrs Birney & Birney, her solicitors, it is ordered that the defendants MARY E. McGRAW BERRY, LEWIS C. KENNEDY, THOMAS E. McGRAW, HENRY R. McGRAW and FRANCIS A. McGRAW, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to have partition by sale of lot six, in Kibbey's sub-division of square 571 in the City of Washington.

This order is to be published once a week for three weeks before said return day in the Washington Law Reporter and in the Evening Star newspapers.

By the Court.

A. B. HAGNER, Justice, &c.

True copy. Test:

J. R. Young, Clerk, &c.

20 By M. A. Clancy, Asst. Clerk.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration c. t. a. on the personal estate of MARY RINGGOLD ARCHEE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of May, 1892.

JAMES R. ARCHER,

Care Randall Hagner,

20 Randall Hagner, Proctor. 406 5th St., n. w., Wash., D. C.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of ANNA E. McCLEERY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of May, 1892.

IDA M. THOMPSON,

1756 Corcoran St., n. w.

20 John B. Thompson, Proctor, 925 F St., n. w.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

Holding a Special Term for Orphans' Court Business.

This 18th of May, 1892.

In re estate of JOHN WHEELER, late of Battery "D," Third United States Artillery.

Application having been made for letters of administration on the estate of said John Wheeler, deceased, by Edward A. Bowers:

Notice is hereby given to all concerned to appear in this court on Friday June 17th 1892, at one o'clock p. m., to show cause if any exist against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter, and Evening Star once a week in each of three successive weeks before said day.

By the Court.

A. B. HAGNER, Justice.

A true copy. Teste:

L. P. WRIGHT,

Register of Wills, D. C.

Edw. A. Bowers

20 No. 4995. Ad. Doc. 17. Proctor for applicant.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Louis Kurtz, Sr.

vs. In Equity. No. 11,284.

Louis Kurtz, Jr., et al.

ORDER NISI.

Your trustee Robert H. T. Leipold, having reported herefore that he had been unable after diligent endeavor to make sale at public auction of the property described in the proceedings in this cause, to wit: The south fifteen (15) feet from front to rear of lot No. 18 in square No. 454, because the highest bid therefor being the sum of ten thousand and five hundred dollars, was, in his judgment, not an adequate price for the said real estate, and the said trustee having lately by his additional report filed herein on the 18th day of May, A. D. 1892, reported an offer by Daniel Ballau to purchase the said real estate at private sale at and for the sum of fifteen thousand dollars, it is therefore, upon consideration of said trustee's report, this 18th day of May, A. D. 1892, adjudged, ordered and decreed that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 18th day of June, 1892.

Provided a copy of this order be published in the Washington Law Reporter and in the Evening Star once each week for successive weeks before said day.

A. B. HAGNER, Justice.

A true copy. Test:

J. R. Young, Clerk.

20 [Filed May 18, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

May 18th, 1892.

In the case of William T. Jones, executor of the will of MARY BLAKE JONES, deceased, the executor aforesaid has, with the approval of the court, appointed Friday, the 17th day of June, A. D. 1892, at one o'clock p. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test:

L. P. WRIGHT,
Register of Wills for the District of Columbia.

20 No. 4434. Ad. D. 16. C. M. & H. S. Matthews, Proctors.

Florence Galleher, et al.

v. No. 12,813. Eq. Docket 33.

William H. Pope, et al.

On motion of the plaintiffs, by Mr. James F. Hood, their solicitor, it is ordered that the defendant, ELIZABETH S. POPE, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to have partition of the lands belonging to the estate of William Pope, who lately died intestate.

By the Court.

A. B. HAGNER, Justice, &c.

True copy. Test:

J. R. Young, Clerk, &c.

20 By M. A. Clancy, Asst. Clerk.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a., on the personal estate of THOMAS A. MITCHELL, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of May, 1892.

EDWIN B. HAY,
20 E. B. Hay, Proctor.
1425 N. Y. Ave.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of LOUIS D. STONE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of May, 1892.

ELIZABETH S. STONE,
20 Edwin B. Hay, Proctor.
1017 P St., n. w.

This is to Give Notice

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of SARAH A. CONNOR, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 9th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 9th day of May, 1892.

EUGENE R. RUSSELL,
his
HERBERT M. HARRIS,
mark
GEORGE R. WALTON,
Care Edwards & Barnard.

20 Edwards & Barnard, Proctors. 500 5th St., n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court Business, letters of administration on the personal estate of SARAH V. BRIGHT, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of May, 1892.

JULIA E. DORMAN,

20 H. B. Moulton, Proctor. 237 8th St., s. e.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

This 18th of May, 1892.

In re estate of JUDSON BROOKS, deceased, late of the District of Columbia.

Application having been made for the probate of a paper-writing propounded as the last will and testament, and for letters of administration c. t. a. on the estate of said Judson Brooks, deceased, by Emaline Brooks:

Notice is hereby given to all concerned to appear in this court on the 10th day of June 1892, at one o'clock p. m., to show cause if any exist against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter, and Evening Star once a week in each of three successive weeks before said day.

By the Court.

A. B. HAGNER, Justice.

A true copy. Teste:

L. P. WRIGHT,

Register of Wills, D. C.

20 No. 4972. Ad. D. 17. C. A. Walter, Proctor for applicant.

Legal Notices**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

The 16th day of May, 1892.

Lucy Davenport, complainant, vs. Henry Davenport, defendant. Equity. No. 18,682.

On motion of the complainant, by Mr. Creed M. Fulton her solicitor, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain an absolute divorce from the bond of marriage because of cruelty of treatment, endangering the life and health of the complainant.

Provided, that a copy of this order be published in the Washington Law Reporter and the Evening Star once a week for each of three successive weeks before said rule-day.

A. B. HAGNER, Associate Justice.

A true copy. Teste: J. R. Young, Clerk,

20 By M. A. Clancy, Asst. Clerk.

THIRD INSERTION.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

Holding a Special Term for Orphans' Court Business.

May 10th, 1892.

In the case of John J. Wilmarth, administrator of CORDIAL STORES, deceased, the administrator aforesaid has, with the approval of the court, appointed Friday, the 10th day of June, A. D. 1892, at 1 o'clock p. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the administrator aforesaid will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Teste: L. P. WRIGHT,
19 Register of Wills for the District of Columbia.
No. 4387. Admin. Doc. 16.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 7th day of May, 1892.

Arthur E. Bateman et al., Complainant,

vs.

Carrie S. Plumb, Executrix and Legatee, and Amos H. Plumb Executor of Preston B. Plumb, deceased, Amos H. Plumb, Mary Plumb, Ruth Plumb (minor), Carrie Plumb (minor), Preston Plumb (minor), all heirs-at-law of Preston B. Plumb, deceased, and Arthur M. Plumb, William J. Plumb, Ellen Plumb, Mary Edwards, David Plumb, Carrie S. Plumb, Legatees under the Last Will and Testament of Preston B. Plumb, deceased, Defendants.

In Equity. No. 18,690.

On motion of the complainants by H. H. Wells and Enoch Totten, their solicitors, it is ordered that the defendants Carrie S. Plumb, executrix and legatee, and Amos H. Plumb, executor of Preston B. Plumb, deceased, Amos H. Plumb, Mary Plumb, Ruth Plumb (a minor), Carrie Plumb (a minor), Preston Plumb (a minor), all heirs at law of Preston B. Plumb, deceased, and Arthur M. Plumb, William J. Plumb, Ellen Plumb, Mary Edwards, David Plumb, Carrie S. Plumb, Legatees under the last will and testament of Preston B. Plumb, deceased, cause their appearance, respectively, to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to cause to be sold, and to enforce a creditors' lien of the complainants, upon the real estate and the interests in real estate situated in the District of Columbia, owned, at the time of his death, by Preston B. Plumb, late of Emporia, in the State of Kansas, a citizen of said State, now deceased, who was a non-resident of this District, who departed this life without personal property sufficient to pay his just debts nor the debts due from him to the complainants, and to obtain a discovery from the defendants, representatives of the deceased, of all other property, real, personal and mixed of which the said Preston B. Plumb died seized.

True copy. Teste: A. C. BRADLEY, Justice.

J. R. Young, Clerk, &c.

By M. A. Clancy, Asst. Clerk.

Legal Notices.**This is to Give Notice**

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of CHARLES D. DRAKE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 6th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of May, 1892.

ANNA P. WESTCOTT,
1416 20th St., n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business,

May 6th, 1892.

In the matter of the estate of JANE W. MICHEL, late of the District of Columbia, deceased.

Application for the probate of the last will and testament and for letters of administration on the estate of the said deceased, has this day been made by Susan M. Taliaferro.

All persons interested are hereby notified to appear in this court on Friday, the 3rd day of June next, at one o'clock p.m., to show cause why the said will should not be proved and admitted to probate and letters of administration on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the court.

A. C. BRADLEY, Justice.

Test:

L. P. WRIGHT,

Register of Wills for the District of Columbia.
19 No. 4969. Ad. Doc. 17. J. Thomas Sothonon, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of May, 1892.

E. L. Parker & Co., { vs. } No. 32,813. Law Docket, 83.
John Conway.

On motion of the plaintiffs, by Mr. Clarence A. Brandenburg, their attorney, it is ordered that the defendant, JOHN CONWAY, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to subject to the satisfaction of plaintiff's claim, certain credits of the defendant attached thereto.

By the court. M. V. MONTGOMERY, Justice, &c.

A true copy. Test: J. R. Young, Clerk,

19 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
William E. Blaine et al. { vs. } In Equity, 13,420.

Annie M. Baldwin et al. }

John Ridout, the trustee in this cause, having reported the sale of the property herein decreed to be sold to John G. Slater for \$6,000, it is this 10th day of May 1892, ordered that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 10th day of June, 1892.

Provided a copy of this order be published in each of the three successive issues of the Washington Law Reporter published next after the date of the said order.

By the Court. A. C. BRADLEY, Justice.

A true copy. Test: J. R. Young, Clerk.

19 By M. A. Clancy, Asst. Clerk.

[Filed May 10, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Robert M. Bell { vs. } In Equity, No. 12,678.

Allen Dant et al. }

John Ridout, the trustee in this cause, having reported the sale of the real estate therein described to Bartow L. Walker, for \$200, it is ordered this 10th day of May, 1892, that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 10th day of June, 1892.

Provided a copy of this order be published in each of the three successive issues of the Washington Law Reporter published next after the date of the said order.

A. C. BRADLEY, Justice.

A true copy. Test: J. R. Young, Clerk.

19 By M. A. Clancy, Asst. Clerk.

[Filed May 10, 1892. J. R. Young, Clerk.]

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**
Holding a Special Term for Orphans' Court Business,
May 6th, 1892.

In the matter of the estate of George Thwaites late of Washington, D. C., deceased.

Application for the probate of the last will and testament and for letters testamentary on the estate of the said deceased, has this day been made by THE WASHINGTON LOAN AND TRUST COMPANY, executor.

All persons interested are hereby notified to appear in this court on Friday the 10th day of June next, at one o'clock p.m., to show cause why the said will should not be proved and admitted to probate and letters testamentary on the estate of the said deceased should not issue as prayed.

Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star previous to the said day.

By the Court. M. V. MONTGOMERY, Justice.

Test: L. P. WRIGHT.

19 Register of Wills for the District of Columbia.
No. 4969. Ad. Doc. 17. [SEAL] John B. Larner, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business,

May 4th, 1892.

In the case of Wm. H. Hoeke, administrator of ALFRED C. PERRY, deceased, the administrator aforesaid has, with the approval of the court, appointed Friday, the 3rd day of June, A. D. 1892, at 1 o'clock p.m., for making payment and distribution under the court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the administrator aforesaid will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: L. P. WRIGHT.

19 Register of Wills for the District of Columbia.
No. 4968. Ad. Doc. 16. J. J. Wilmarth, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 9th day of May, 1892.

Mary B. Wilson { vs. } No. 13,761. Eq. Docket, 83.
Samuel C. Wilson. }

On motion of the plaintiff, by Mr. Campbell Carrington, her solicitor, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for an absolute divorce upon the ground of wilful and uninterrupted desertion, for more than eight years from the filing of the petition in this cause.

By the Court. A. C. BRADLEY, Justice, &c.

A true copy. Test: J. R. Young, Clerk.

19 By M. A. Clancy, Asst. Clerk.
[Filed May 9, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Caroline A. Shedd { vs. } No. 13,445. Equity Doc. 32.
Frederick R. Slater et al. }

This cause coming on to be heard upon the petition of the trustee and the offer of Swormstedt & Bradley and the assent of the guardian ad litem it is this 6th day of May, 1892, ordered, adjudged and decreed that the said trustee be and he is hereby authorized to accept the said offer of \$3.75 per square foot for the remainder of the said property, payable one-fourth in cash and the remainder in two years with interest at the rate of 6 per cent. per annum, payable semi-annually, provided no objections to the said sale be filed on or before the 6th day of June, 1892.

And, provided further, that a copy of this order be published in the Washington Law Reporter once in each of three successive weeks prior to the said date.

A. C. BRADLEY, Justice.

True copy. Test: J. R. Young, Clerk, &c.

19 By M. A. Clancy, Asst. Clerk.

[Filed May 6, 1892. J. R. Young, Clerk.]

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WASHINGTON, D. C., - - - JUNE 2, 1892

Supreme Court of the United States.

THE NORTHERN PACIFIC RAILROAD COMPANY, PLAINTIFF IN ERROR,

v.

J. F. ELLIS.

1. The decision of the Supreme Court of Wisconsin rested upon an independent ground not involving a Federal question and broad enough to maintain the judgment; and the motion to dismiss the writ of error must be sustained.
2. The Wisconsin court held that by reason of its decision of May 20, 1890, when the case was presented to the court on the appeal of the railroad company from the order of the lower court upon demurrer, the rights of the parties were *res adjudicata*, and that it was itself, as the parties were, bound by its own former judgment.

Decided April 11, 1892.

IN ERROR to the Supreme Court of the State of Wisconsin.

Ellis brought his action in the Circuit Court for Douglas County, Wisconsin, against the Northern Pacific Railroad Company, E. L. Johnson, W. H. Sage, and Henry W. Bradford, July 1, 1889, to quiet title to seven lots in the city of Superior, deraigned through one Roberts, to whom the county of Douglas, which held under certain tax deeds, had conveyed, and then averred that the Northern Pacific Railroad Company asserted title to the lots under a certain deed, a copy of which was given. This deed recited that by resolution of the county board of supervisors, passed on the 7th day of September, 1880, and duly entered in their record of proceedings, the county of Douglas offered and agreed to transfer, by good and sufficient deed or deeds, to the Northern Pacific Railroad Company, all the alienable lots or lands belonging to the said county of Douglas, which had been acquired by deed, and to which said county had held un-

disputed title during two years then last past, upon condition that the said Northern Pacific Railroad Company should, within the year 1881, construct, complete, and equip a railroad from the Northern Pacific junction, entering the State of Wisconsin, and running therein between the St. Louis and the Nemadji rivers to the Bay of Superior, at or near the mouth of the Nemadji River, and thence to Connor's Point, along or near the westerly side of said bay, with a depot, and convenient connections with docks or piers; that the railroad company by resolution of its board of directors duly accepted the offer and terms of the agreement, and constructed, completed, and equipped a railroad as required; and, therefore, the county "hereby quit claims to the Northern Pacific Railroad, grantees, in consideration of the premises, and for the sum of one dollar in hand paid by said grantee," etc., the lots in question and others, the deed being duly executed by the county clerk and sealed with the county seal, with proper witnesses and acknowledgment.

It was further alleged that prior to the issuing of the deed the county board of Douglas County, on or about the 16th day of December, 1880, entered into a contract with the railroad company, substantially as appeared by the recitals in the deed, with the exception of an extension of time for one year in which to complete the road; that the contract was without authority upon the part of the county, and its acts were *ultra vires* and void; that the railroad company neither paid to the county or for its use, nor contracted to pay, any valuable consideration, nor to issue, nor did it issue, any stock in the company to the county, or for its use, nor did the county ever subscribe for or agree to take any stock in the company; and that the only consideration for the conveyance was the bonus or inducement to the company to locate its road in Superior.

That the defendants Sage, Johnson, and Bradford, respectively, claimed, as owners of the original title, some interest in some of these lots; and abstracts, showing the chain of title, were affixed as exhibits.

That the value of all the lots was \$1,400; and that by reason of the premises the plaintiff was embarrassed and injured in his title, &c.

The prayer was for a decree that the plaintiff be adjudged the owner of the lots in fee simple, free from any lien, claim, title or right made or exercised or attempted

to be made or exercised by the defendants, or any of them, by virtue of their several claims of ownership; and that the deed from the county of Douglas to the railroad company be adjudged illegal, null, and void, and the plaintiff quieted in his title and possession, &c.

The railroad company filed its demurrer to the complaint on July 23, 1889, assigning as grounds multifariousness and insufficiency of facts stated to constitute a cause an action.

August 22, 1889, the Douglas County Circuit Court entered an order overruling the demurrer, from which order the railroad company prosecuted an appeal to the Supreme Court of Wisconsin.

The Supreme Court held that "a conveyance of its lands by a county as a donation to a railroad company is void; and the legislature, having no power to authorize such donation in the first instance, cannot by a subsequent statute validate the conveyance;" and that the deed in question was, therefore, void; and it gave judgment May 20, 1890, affirming the order of the court below, and remanding the cause for further proceedings. *Ellis v. Northern Pacific RR. Co.*, 77 Wis., 114.

The opinion and order were filed in the Douglas County Circuit Court July 23, 1890, and on August 15, 1890, the company filed its answer reasserting, among other things, its claim under the deed of the county.

March 11, 1891, the company applied for leave to file a supplemental answer, which was denied, and on March 30 the court made its findings upon which judgment was rendered April 13, 1891, establishing the title of the plaintiff, and adjudging the invalidity of the railroad company's claim.

A bill of exceptions was duly signed, and contained the supplemental answer, which the railroad company had asked leave to file, and the motion for such leave and the order thereon denying it. This supplemental answer averred that on December 13, 1889, the railroad company filed its bill of complaint in the Circuit Court of the United States for the Western District of Wisconsin against Roberts, Johnson and Ellis, (the plaintiff in this case,) setting forth the passage of resolutions by the board of supervisors of Douglas County, the acceptance by the company of the proposition therein made, and its compliance therewith by the construction of the line of railroad required to be built, and the conveyance to

the company in accordance with another resolution of the board, whereby, it was alleged, the company became owner in fee simple of the real estate mentioned therein, of which all but the seven lots embraced in this action was claimed in the complaint; that the identical question involved in this suit was involved in the case in the Circuit Court of the United States, which was heard, upon bill and answer, November, 18, 1890, and taken under advisement, and on February 11, 1891, that court directed a decree in favor of the company and against the defendants, which decree was afterwards, on March 7, 1891, duly entered, it being thereby ordered, adjudged and decreed that the company was the full, legal and beneficial owner of all the lands described in the bill of complaint in said cause, and that the deeds of conveyance by the county to Roberts and by Roberts to Ellis were and are invalid and of no force and effect as against the complainant; and the railroad company insisted upon this decree as an absolute bar to the relief prayed in this action.

The bill of exceptions also showed the evidence offered on the trial in the State court, including the resolutions of the supervisors of Douglas County and of the railroad company, and the record of the suit in the United States court, which was offered in evidence, but excluded, exceptions being taken by the railroad company. From the judgment of the Circuit Court of Douglas County the railroad company appealed to the Supreme Court of the State, which, on November 17, 1891, affirmed it.

The opinion of the Supreme Court by Winslow, J., will be found reported in advance of the official series in 50 N. W. Rep., 397. The court, after stating the case, said :

"The Circuit Court held, in its rulings upon the proposed answer and in its judgment, in effect, that the decision of this court upon the former appeal was *res adjudicata* in this action. If this view was correct, then the judgment below must be sustained, because upon that appeal the question was fairly raised whether the county could lawfully donate the land in question to the railroad company, and it was decided by this court that it could not. It is vigorously contended by appellant's counsel that the rule of law is that a decision can only become *res adjudicata* when it is contained in a final judgment in the cause, and that the decision upon the demurrer being confessedly not a final judg-

ment, but granting leave to plead over, it cannot be considered as *res adjudicata*, and authorities are cited which undoubtedly tend to support that contention. We shall not attempt to review the authorities nor reconcile conflicting decisions. It is sufficient to say that by repeated decisions it has become the settled law in this State that the decision of this court upon a demurrer is conclusive upon the questions legitimately involved, and is *res adjudicata* in that case. *Noonan v. Orton*, 27 Wis., 300; *Lathrop v. Knapp*, 37 Wis., 307; *Fire Dept. v. Tuttle*, 50 Wis., 552. It is true that this court has decided that an order of the Circuit Court upon a demurrer is not *res adjudicata*. This doctrine, however, is based upon the ground that such an order is reviewable by statute upon appeal from the judgment. *Hackett v. Carter*, 38 Wis., 394. But the decision of this court upon a demurrer upon the questions properly involved cannot be reviewed by the Circuit Court, nor, indeed, by this court, save upon motion for rehearing. Such questions are finally decided and settled for that case, and, as between the parties to that litigation, for all time. This view of the law decides this case. The complaint charged the appellant's alleged title to be just what the proofs now before us show it to be, and this court, prior to the judgment in the United States court, finally decided that such alleged title was worthless. The question was no longer an open one, and the Circuit Court was right in ruling out the record of the action in the United States court, and rendering judgment for the plaintiff."

A writ of error was thereupon sued out from this court.

Mr. Chief Justice FULLER delivered the opinion of the court:

The motion to dismiss the writ of error must be sustained. The decision of the Supreme Court of Wisconsin rested upon an independent ground not involving a Federal question and broad enough to maintain the judgment. *Hammond v. Johnson*, 142 U. S., 73.

The Supreme Court held that by reason of its decision of May 20, 1890, when the case was presented to the court on the appeal of the railroad company from the order of the lower court upon demurrer, the rights of the parties were *res adjudicata*, and that it was itself, as the parties were, bound by its own former judgment. Its conclusion had been announced and its mandate had gone down, and it had no

power upon a second appeal to review that judgment. This is the settled rule in Wisconsin. *Lathrop v. Knapp*, 37 Wis., 307; *Fire Department v. Tuttle*, 50 Wis.; 552; and in this court, *Clark v. Keith*, 106 U. S., 464; *Chaffin v. Taylor*, 116 U. S., 567; *Peck v. Sanderson*, 18 How., 42; *Hickman v. Fort Scott*, 141 U. S., 415. Under these circumstances the judgment of the Supreme Court is not subject to review here.

The suit in the State court involving certain lots was commenced before the institution of the action in respect to other real estate in the Circuit Court of the United States, and the judgment of the Supreme Court of the State had become *res adjudicata* between the parties, before the decree was entered by the Circuit Court. The judgment before us was rendered in accordance with well-settled principles of general law, not involving any Federal question, and did not deny to the decree of the Circuit Court the effect which would be accorded under similar circumstances to the judgments and decrees of the State court.

The writ of error is dismissed.

In the case of *Logan et al. v. The United States* we publish the following *abstract*, which will show the points decided by the court. The opinion in full, which is of great length, will soon appear in the official reports of the court:

In error to the Circuit Court of the United States for the Northern District of Texas.

* * * * *

Decided April 4, 1892.

Mr. Justice GRAY, after stating the case as above, delivered the opinion of the court:

The plaintiffs in error were indicted on sections 5508 and 5509 of the Revised Statutes, for conspiracy, and for murder in the prosecution of the conspiracy; and were convicted, under section 5508, of a conspiracy to injure and oppress citizens of the United States in the free exercise and enjoyment of the right to be secure from assault or bodily harm, and to be protected against unlawful violence, while in the custody of a marshal of the United States under a lawful commitment by a commissioner of the Circuit Court of the United States for trial for an offense against the laws of the United States.

By section 5508 of the Revised Statutes, "if two or more persons conspire to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any

right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same," "they shall be fined not more than five thousand dollars and imprisoned not more than ten years, and shall, moreover, be thereafter ineligible to any office or place of honor, profit or trust, created by the Constitution or laws of the United States."

1. The principal question in this case is whether the right of a citizen of the United States, in the custody of a United States marshal under a lawful commitment to answer for an offense against the United States, to be protected against lawless violence, is a right secured to him by the Constitution or laws of the United States, or whether it is a right which can be vindicated only under the laws of the several States.

* * * * *

The United States are bound to protect against lawless violence all persons in their service or custody in the course of the administration of justice. This duty and the correlative right of protection are not limited to the magistrates and officers charged with expounding and executing the laws, but apply, with at least equal force, to those held in custody on accusation of crime, and deprived of all means of self-defense.

For these reasons, we are of opinion that the crime of which the plaintiffs in error were indicted and convicted was within the reach of the constitutional powers of Congress, and was covered by section 5508 of the Revised Statutes; and it remains to be considered whether they were denied any legal right by the other rulings and instructions of the Circuit Court.

2. The objection to the consolidation of the indictments on which the plaintiffs in error were tried and convicted cannot prevail.

Congress has enacted that "when there are several charges against any person for the same act or transaction, or for two or more acts or transactions connected together, or for two or more acts or transactions of the same class of crimes or offenses, which may be properly joined, instead of having several indictments the whole may be joined in one indictment in separate counts; and if two or more indictments are found in such cases, the court may order them to be consolidated." Rev. Stat., Sec. 1024.

The record before us shows that the court below at different times made three orders of consolidation.

The only exception taken by the defend-

ants to any of these orders was to the first one, made at October term, 1890, by which four of the indictments on which a trial was afterwards had were ordered to be consolidated with five earlier indictments which included other defendants and different offenses.

By the second order of consolidation, made on a subsequent day of the same term, the five earlier indictments were ordered to be separated, so that in this respect the case stood as if they had never been consolidated with the four later ones; two of the defendants in one of these four indictments were ordered to be severed and tried separately; and the former order of consolidation was confirmed as to the four indictments, all of which, as they then stood, were charges against the same persons "for the same act or transaction," or, at least, "for two or more acts or transactions connected together," and therefore within the very terms and purpose of the section of the Revised Statutes above quoted, and might perhaps have been ordered, in the discretion of the court, to be tried together, independently of any statute upon the subject. See United States v. Yarbrough, 110 U. S., 651, 655; United States v. Marchant, 12 Wheat., 480; Withers v. Commonwealth, 5 S. & R., 59. And to this order no exception was taken.

By the third order of consolidation, indeed, made at February term 1891, shortly before the trial, a new indictment against different persons for the same crime was consolidated with the four indictments. But it is unnecessary to consider whether this was open to objection, since none of the defendants objected or excepted to it. They may all have considered it more advantageous or more convenient to have the new indictment tried together with the other four. Having gone to trial, without objection, on the indictments as consolidated under the last order of the court, it was not open to any of them to take the objection for the first time after verdict.

3. The objection made to the four indictments, that they should have been found by the grand jury at Graham and not at Dallas, is based on a misapprehension of the acts of Congress upon that subject. By the Act of February 24, 1879, Ch. 97, Sec. 1, creating the Northern Judicial District of Texas, Young County is one of the counties included in that district; by Sec. 4 the terms of the courts in that district are to be held at Waco, at Dallas, and at Graham; and by Sec. 5, "all process issued against defend-

ants residing in the counties of" Young and certain adjoining counties "shall be returned to Graham," and against defendants residing in certain other counties to Waco and to Dalles respectively. 20 Stat., 318, 319. By the Act of June 14, 1880, Ch. 213, that act is amended by adding, at the end of section 5, these words: "And all prosecutions in either of said districts for offenses against the laws of the United States shall be tried in that division of the district to which process for the county in which said offenses are committed is by said section required to be returned; and all writs and recognizances in said prosecutions shall be returned to that division in which said prosecutions by this act are to be tried." 21 Stat., 198. This provision does not affect the authority of the grand jury for the district, sitting at any place at which the court is appointed to be held, to present indictments for offenses committed anywhere within the district. It only requires the trial to be had, and writs and recognizances to be returned, in the division in which the offense is committed. The finding of the indictment is no part of the trial. And these indictments were tried at Graham in conformity with the statute.

4. The plea of former jeopardy was rightly held bad. It averred that the discharge of the jury at the former trial without the defendants' consent was by the court, of its own motion, and after the jury, having been in retirement to consider their verdict for forty hours, had announced in open court that they were unable to agree as to these defendants. The further averment that "there existed in law or fact no emergency or hurry for the discharge of said jury, nor was said discharge demanded for the ends of public justice," is an allegation, not so much of specific and traversable facts, as of inference and opinion, which cannot control the effect of the facts previously alleged. Upon those facts, whether the discharge of the jury was manifestly necessary in order to prevent a defeat of the ends of public justice, was a question to be finally decided by the presiding judge in the sound exercise of his discretion. United States v. Perez, 9 Wheat., 579; Simmons v. United States, 142 U. S., 148.

* * * * *

5. As the defendants were indicted and to be tried for a crime punishable with death those jurors who stated on *voir dire* that they had "conscientious scruples in regard to the infliction of the death penalty for crime"

were rightly permitted to be challenged by the government for cause. A juror who has conscientious scruples on any subject, which prevent him from standing indifferent between the government and the accused, and from trying the case according to the law and the evidence, is not an impartial juror. This court has accordingly held that a person who has a conscientious belief that polygamy is rightful may be challenged for cause on a trial for polygamy. Reynolds v. United States, 98 U. S., 145, 147, 157; Miles v. United States, 103 U. S., 304, 310. And the principle has been applied to the very question now before us by Mr. Justice Story in United States v. Cornell, 2 Mason, 91, 105, and by Mr. Justice Baldwin, in U. S. v. Wilson, Baldwin, 78, 83, as well as by the courts of every State in which the question has arisen, and by express statute in many States. Whart. Crim. Pl. (9th ed.), Sec. 564.

6. In support of the objection to the competency of the two witnesses who had been previously convicted and sentenced for felony, the one in North Carolina, and the other in Texas, the plaintiffs in error relied on article 730 of the Texas Code of Criminal Procedure of 1879, which makes incompetent to testify in criminal cases "all persons who have been or may be convicted of felony in this State, or in any other jurisdiction, unless such conviction has been legally set aside, or unless the convict has been legally pardoned for the crime of which he was convicted."

By an Act of the Congress of the Republic of Texas of December 20, 1836, Sec. 41, "the common law of England, as now practiced and understood, shall, in its application to juries and to evidence, be followed and practiced by the courts of this republic, so far as the same may not be inconsistent with this act, or any other law passed by this congress." 1 Laws of Republic of Texas (ed., 1838), 156. That act was in force at the time of the admission of Texas into the Union in 1845. The first act of the State of Texas on the incompetency of witnesses, by reason of conviction of crime, appears to have been the statute of February 15, 1858, Ch. 151, by which all persons convicted of felony, in Texas or elsewhere, were made incompetent to testify in criminal actions, notwithstanding a pardon, unless their competency to testify had been specifically restored. General Laws of 7th Legislature of Texas, 242; Oldham & White's Digest, 640. That provision was

afterwards put in the shape in which it stands in the Code of 1879, above cited.

The question whether the existing statute of the State of Texas upon this subject is applicable to criminal trials in the courts of the United States held within the State depends upon the construction and effect of section 858 of the Revised Statutes of the United States, which is as follows: "In the courts of the United States no witness shall be excluded in any action on account of color, or in any civil action because he is a party to or interested in the issue tried: provided, that in actions by or against executors, administrators or guardians, in which judgment may be rendered for or against them, neither party shall be allowed to testify against the other as to any transaction with, or statement by, the testator, intestate or ward, unless called to testify thereto by the opposite party, or required to testify thereto by the court. In all other respects, the laws of the State in which the court is held shall be the rules of decision as to the competency of witnesses in the courts of the United States in trials at common law, and in equity and admiralty."

In 1862, Congress enacted that "the laws of the State in which the court shall be held shall be the rules of decision as to the competency of witnesses in the courts of the United States in trials at common law, in equity, and in admiralty." 12 Stat., 588. By a familiar rule, the words "trials at common law" in this statute are to receive the construction which had been judicially given to the same words in the earlier statute relating to the same subject. The Abbottsford, 98 U. S., 440; United States v. Mooney, 116 U. S., 104; *In re Louisville Underwriters*, 134 U. S., 488. It has received that construction in several of the Circuit Courts. United States v. Hawthorne, 1 Dillon, 422; United States v. Brown, 1 Sawyer, 531, 538; United States v. Black, 1 Fox, 570, 571. The question has not come before this court, probably because there never was a division of opinion upon it in a Circuit Court, which was the only way, until very recently, in which it could have been brought up.

The provision "that in the courts of the United States there shall be no exclusion of any witness on account of color, nor in civil actions because he is a party to or interested in the issue tried" was first introduced in 1864 in the Sundry Civil Appropriation Act for the year ending June 30, 1865, as a

proviso to a section making an appropriation for bringing counterfeiters to trial and punishment. Act of July 2, 1864, Ch. 210, Sec. 3; 13 Stat., 351. That proviso, as already suggested, included criminal cases in the first clause, as distinguished from the second. But it had no tendency to bring criminal cases within the general provision of the Act of 1862.

The proviso as to actions by or against executors, administrator or guardians was added, by way of amendment to section 3 of the appropriation act above mentioned, by the Act of March 3, 1865, Ch. 113. 13 Stat., 533. This proviso had evidently no relation to criminal cases.

The combination and transposition of the provisions of 1862, 1864 and 1865, in a single section of the Revised Statutes, putting the two provisos of the later statutes first, and the general rule of the earlier statute last, but hardly changing the words of either, except so far as necessary to connect them together, cannot be held to have altered the scope and purpose of these enactments, or of any of them. It is not to be inferred that Congress, in revising and consolidating the statutes, intended to change their effect, unless an intention to do so is clearly expressed. *Potter v. National Bank*, 102 U. S., 163; *McDonald v. Hovey*, 110 U. S., 619; *United States v. Ryder*, 110 U. S., 729, 740.

It may be added that Congress has enacted that any person convicted of perjury, or subornation of perjury, under the laws of the United States, shall be incapable of giving testimony in any court of the United States until the judgment is reversed; Rev. Stat., Secs. 5392, 5393; and has made specific provisions as to the competency of witnesses in criminal cases, by permitting a defendant in any criminal case to testify on the trial, at his own request; and by making the lawful husband or wife of the accused a competent witness in any prosecution for bigamy, polyamy or unlawful cohabitation. Act of March 16, 1878, Ch. 37; 20 Stat., 30; Act of March 3, 1887, Ch. 397; 24 Stat., 635.

For the reasons above stated, the provision of section 858 of the Revised Statutes, that "the laws of the State in which the court is held shall be the rules of decision as to the competency of witnesses in the courts of the United States in trials at common law, and in equity and admiralty," has no application to criminal trials; and, therefore, the competency of witnesses in

criminal trials in the courts of the United States held within the State of Texas is not governed by a statute of the State which was first enacted in 1858, but, except so far as Congress has made specific provisions upon the subject, is governed by the common law, which, as has been seen, was the law of Texas before the passage of that statute and at the time of the admission of Texas into the Union as a State.

At common law and on general principles of jurisprudence, when not controlled by express statute giving effect within the State which enacts it to a conviction and sentence in another, such conviction and sentence can have no effect, by way of penalty, or of personal disability or disqualification, beyond the limits of the State in which the judgment is rendered. *Wisconsin v. Pelican Ins. Co.*, 127 U. S., 265; *Commonwealth v. Green*, 17 Mass., 515; *Sims v. Sims*, 75 N. Y., 466; *National Trust Co. v. Gleason*, 77 N. Y., 400; *Story on Conflict of Laws*, Sec. 92; 1 *Greenl. Ev.*, Sec. 376. It follows that the conviction of Martin in North Carolina did not make him incompetent to testify on the trial of this case.

The competency of Spear to testify is equally clear. He was convicted and sentenced in Texas; and the full pardon of the Governor of the State, although granted after he had served out his term of imprisonment, thenceforth took away all disqualifications as a witness, and restored his competency to testify to any facts within his knowledge, even if they came to his knowledge before his disqualification had been removed by the pardon. *Boyd v. United States*, 142 U. S., 450; *United States v. Jones*, (before Mr. Justice Thompson,) 2 *Wheeler Crim Cas.*, 451, 461; *Hunnicutt v. State*, 18 Tex. App., 498; *Thornton v. State*, 20 Tex. App., 519.

Whether the conviction of either witness was admissible to affect his credibility is not before us, because the ruling on that question was in favor of the plaintiffs in error.

7. Another question worthy of consideration arises out of the omission to deliver to the defendants lists of the witnesses to be called against them.

Section 1033 of the Revised Statutes is as follows: "When any person is indicted of treason, a copy of the indictment, and a list of the jury, and of the witnesses to be produced on the trial for proving the indictment, stating the place of abode of each

juror and witness, shall be delivered to him at least three entire days before he is tried for the same. When any person is indicted of any other capital offense, such copy of the indictment and list of the jurors and witnesses shall be delivered to him at least two entire days before the trial." This section re-enacts a provision of the first Crimes Act of the United States, except that under that act the defendant, if indicted for any capital offense other than treason, was not entitled to a list of the witnesses. Act of April 30, 1790, Ch. 9, Sec. 29; 1 Stat. 118.

The words of the existing statute are too plain to be misunderstood. The defendant, if indicted for treason, is to have delivered to him three days before the trial "a copy of the indictment, and a list of the jury, and of the witnesses to be produced on the trial for proving the indictment;" and if indicted for any other capital offense, is to have "such copy of the indictment and list of the jurors and witnesses" two days before the trial. The list of witnesses required to be delivered to the defendant is not a list of the witnesses on whose testimony the indictment has been found, or whose names are indorsed on the indictment; but it is a list of the "witnesses to be produced on the trial for proving the indictment." The provision is not directory only, but mandatory to the Government; and its purpose is to inform the defendant of the testimony which he will have to meet, and to enable him to prepare his defense. Being enacted for his benefit, he may doubtless waive it, if he pleases; but he has a right to insist upon it, and if he reasonably does so, the trial cannot lawfully proceed until the requirement has been complied with. *United States v. Stewart*, 2 Dall., 343; *United States v. Curtis*, 4 Mason, 232; *United States v. Dow*, *Taney*, 34; *Regina v. Frost*, 9 Car. & P., 129; *S. C.*, 2 *Moody*, 140; *Lord v. State*, 18 N. H., 173; *People v. Hall*, 48 Michigan, 482, 487; *Keener v. State*, 18 Georgia, 194, 218.

The provision is evidently derived from the English statute of 7 Anne, Ch. 21, section 11, by which it was enacted that "when any person is indicted for high treason or misprision of treason, a list of the witnesses that shall be produced on the trial for proving the said indictment, and of the jury, mentioning the names, profession, and place of abode of the said witnesses and jurors, be also given, at the same time that the copy of the indictment is delivered to the party indicted, and that copies of all indict-

ments for the offences aforesaid, with such lists, shall be delivered to the party indicted ten days before the trial and in presence of two or more credible witnesses."

* * * * *

In the present case, copies of the indictments, having indorsed on each the names of the witnesses upon whose testimony it had been found by the grand jury, were delivered to the defendants more than two days before the trial. But no list of the "witnesses to be produced on the trial for proving the indictment" was ever delivered to any of them; and forty witnesses, none of whose names were indorsed on the indictments, were called by the Government, and admitted to testify, as of course, to support the indictments and make out the case for the Government, without a suggestion of any reason for not having delivered to the defendants the lists required by the statute.

* * * * *

It is unnecessary, however, in this case, to express a definitive opinion upon the question whether the omission to deliver the list of witnesses to the defendants would of itself require a reversal of their conviction and sentence for less than a capital offence, inasmuch as they are entitled to a new trial upon another ground.

8. The court went too far in admitting testimony on the general question of conspiracy.

Doubtless, in all cases of conspiracy, the act of one conspirator in the prosecution of the enterprise is considered the act of all, and is evidence against all. *United States v. Gooding*, 12 Wheat., 460, 469. But only those acts and declarations are admissible under this rule, which are done and made while the conspiracy is pending, and in furtherance of its object. After the conspiracy has come to an end, whether by success or by failure, the admissions of one conspirator, by way of narrative of past facts, are not admissible in evidence against the others. 1 Greenl. Ev., Sec. 111; 3 Greenl. Ev., Sec. 94; *State v. Dean*, 13 Iredell, 63; *Patton v. State*, 6 Ohio St., 467; *State v. Thibeau*, 30 Vermont, 100; *State v. Larkin*, 49 N. H., 39; *Heine v. Commonwealth*, 91 Penn. St., 145; *Davis v. State*, 9 Tex. App., 363.

Tested by this rule, it is quite clear that the defendants on trial could not be affected by the admissions made by others of the alleged conspirators after the conspiracy had ended by the attack on the prisoners, the killing of two of them, and the dispersion of the mob. There is no evidence in the

record tending to show that the conspiracy continued after that time. Even if, as suggested by the counsel for the United States, the conspiracy included an attempt to manufacture evidence to shield Logan, Johnson's subsequent declarations that Logan acted with the mob at the fight at Dry Creek were not in execution or furtherance of the conspiracy, but were mere narratives of a past fact. And the statements to the same effect, made by Charles Marlow to his companions while returning to the Denson Farm after the fight was over, were incompetent in any view of the case.

There being other evidence tending to prove the conspiracy, and any acts of Logan in furtherance of the conspiracy being therefore admissible against all the conspirators as their acts, the admission of incompetent evidence of such acts of Logan prejudiced all the defendants and entitles them to a new trial.

Upon the other exceptions taken by the defendants to rulings and instructions at the trial we give no opinion, because they involve no question of public interest, and may not again arise in the same form.

Judgment reversed, and case remanded to the Circuit Court, with directions to set aside the verdict and to order a new trial.

Mr. Justice LAMAR did not concur in the opinion of the court on the construction of section 5508 of the Revised Statutes.

Mr. Justice BREWER was not present at the argument, and took no part in the decision of this case.

Acts and Joint Resolutions of the 52d Congress, relating to District of Columbia matters.

To amend an act entitled "An act to amend the general incorporation law of the District of Columbia," approved May seventeenth, eighteen hundred and eighty-two.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section one of the act entitled "An act to amend the general incorporation law of the District of Columbia," approved May seventeenth, eighteen hundred and eighty-two, be, and the same is hereby, amended by adding, after the words "or for the purpose of insuring title to real estate," the words "or for the purpose of carrying on fire insurance;" so as to read:

"That the five hundred and fifty-third section of the Revised Statutes of the United States, relating to the District of Columbia, be, and the same is hereby, amended by adding, after the words "life insurance," the words "or for the

purpose of insuring titles to real estate or for the purpose of carrying on fire insurance."

SEC. 2. That section two of said act be, and the same is hereby amended by adding, after the words "or for the purpose of insuring titles to real estate," the words "or for the purpose of carrying on fire insurance;" so as to read:

SEC. 2. That any company heretofore formed, agreeably to the aforesaid section of the said Revised Statutes, for the purpose of insuring titles to real estate or for the purpose of carrying on fire insurance may become perpetual on filing in the office of the recorder of deeds of the District of Columbia a certificate to that effect, in like manner as is provided by law for the filing of the original certificate of incorporation.

SEC. 3. Congress may at any time alter, amend or repeal this act.

Approved, February 9, 1892.

An act to change the corporate name of the National Safe Deposit Company, of Washington.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the corporate name of the National Safe Deposit Company of Washington, a body corporate now doing business in the District of Columbia and incorporated under an act of Congress entitled "An act to incorporate the National Safe Deposit Company, of Washington, in the District of Columbia," approved January twenty-second, eighteen hundred and sixty-seven, be, and the same is hereby, changed to, and shall hereafter be, "The National Safe Deposit, Savings and Trust Company, of the District of Columbia."

Approved, February 18, 1892.

Joint resolution to regulate licenses to proprietors of theaters in the city of Washington, District of Columbia, and for other purposes.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That all licenses issued by the Commissioners of the District of Columbia to proprietors of theaters or other public places of amusement in the city of Washington, District of Columbia, and now in force, be and the same are hereby terminated, unless the persons holding such licenses shall within ten days after due notice comply with such regulations as may be prescribed for the public safety by the Commissioners of the District of Columbia.

SEC. 2. That the Commissioners of the District of Columbia are hereby authorized and empowered to make and enforce all such reasonable and usual police regulations in addition to those already made under the act of January twenty-sixth, eighteen hundred and eighty-seven, as they may deem necessary for the protection of lives, limbs, health, comfort and quiet of all persons and the protection of all property within the District of Columbia.

Approved, February 26, 1892.

An act to prevent fraudulent transactions on the part of commission merchants and other

consignees of goods and other property in the District of Columbia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That if any factor, commission merchant, consignee, or any person selling goods on commission, or the agent, clerk, or servant of such person, shall convert to his own use in the District of Columbia any provisions, fruits, flour, meat, butter, cheese, or any other goods, merchandise, or property, or the proceeds of the same, and shall fail to pay over the avails or proceeds, less his proper charges, within five days after receiving the money or its equivalent from the purchaser or purchasers of said goods or produce, and after demand made therefor by the person entitled to receive the same, or his or her duly authorized agent, he shall be deemed guilty of a misdemeanor, and upon information and conviction in the police court of the District of Columbia shall be fined not more than one thousand dollars or be imprisoned not exceeding six months, or both, in the discretion of the court.

Approved, March 21, 1892.

An act to amend an act entitled "An act making appropriations to provide for the expenses of the government for the District of Columbia for the fiscal year ending June thirtieth, eighteen hundred and eighty-two, and for other purposes," approved March third, eighteen hundred and eighty-one.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the paragraph relating to the duties of the assessor, commencing with the fourth line from the bottom of page four hundred and sixty and ending with and including the eighth line from the top of page four hundred and sixty-one, of volume twenty-one, United States Statutes at Large, be, and the same is hereby, amended so as to read as follows :

"The books of assessment for the fiscal year ending June thirtieth, eighteen hundred and ninety-three, and annually thereafter, shall be prepared by the assessor of the District of Columbia before the first day of November of each year, and upon the completion thereof, said assessor shall prepare a statement showing the total amount of the assessment of both real and personal property, and the total amount of taxes to be collected under said assessment; which statement shall be received by the collector of taxes in triplicate, and said collector shall be held responsible under his bond for all such taxes, except such as he may not be able to collect after fully complying with the requirements of law. The original receipt of said assessment and taxes shall be forwarded by the assessor to the First Comptroller of the Treasury, the duplicate to the auditor of the District of Columbia, and the triplicate shall be retained by the collector. Hereafter all tax bills shall be made up under the direction of the assessor of the District of Columbia. All acts or parts of acts inconsistent with any of the provisions of this act are hereby repealed."

Approved, March 31, 1892.

An act to prevent fraud upon the water revenues of the District of Columbia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who, with intent to injure or defraud the District of Columbia, shall make or cause to be made any pipe, tube, or other instrument or contrivance, or connect the same or cause it to be connected with any water main or service pipe or other pipe for conducting or supplying Potomac water, in such manner as to pass or carry the water, or any portion thereof, around or without passing through the meter provided for the measuring and registering of the Potomac water supplied to any premises, or who shall, without permission from the Commissioners of the District of Columbia, tamper with or break any water meter or break the seal thereof, or in any manner change the reading of the dial thereof, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by imprisonment not exceeding six months, or by fine not exceeding two hundred and fifty dollars.

Approved, April 5, 1892.

Joint Resolution amending the "Joint Resolutions to regulate licenses to proprietors of theaters in the City of Washington, District of Columbia, and for other purposes" approved February twenty-sixth, eighteen hundred and ninety-two.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Commissioners of the District of Columbia are hereby authorized to extend, for a reasonable period to be determined by them, the time for compliance with the regulations prescribed by them for the public safety, pursuant to the requirements of the first section of the Joint Resolution "to regulate licenses to proprietors of theatres in the city of Washington, District of Columbia, and for other purposes," approved February twenty-sixth eighteen hundred and ninety-two, in cases where they are satisfied that the persons notified are making due exertion to effect such compliance and that said Commissioners may continue in force pending such compliance, the licenses for any such theatre or public place of amusement: *Provided*, That no more than ninety days extension of time in the aggregate shall be allowed for compliance with such regulations.

Approved, April 6, 1892.

Joint resolution to encourage the establishment and endowment of institutions of learning at the national capital by defining the policy of the Government with reference to the use of its literary and scientific collections by students.

Whereas, large collections illustrative of the various arts and sciences and facilitating literary and scientific research have been accumulated by the action of Congress through a series of years at the national capital; and

Whereas it was the original purpose of the Government thereby to promote research and the diffusion of knowledge, and is now the set-

tled policy and present practice of those charged with the care of these collections specially to encourage students who devote their time to the investigation and study of any branch of knowledge by allowing to them all proper use thereof; and

Whereas it is represented that the enumeration of these facilities and the formal statement of this policy will encourage the establishment and endowment of institutions of learning at the seat of Government and promote the work of education by attracting students to avail themselves of the advantages aforesaid under the direction of competent instructors: Therefore,

Resolved by the Senate and House of Representatives of the United States of America, in Congress assembled, That the facilities for research and illustration in the following and any other Governmental collections now existing or hereafter to be established in the city of Washington for the promotion of knowledge shall be accessible, under such rules and restrictions as the officers in charge of each collection may prescribe, subject to such authority as is now or may hereafter be permitted by law, to the scientific investigators and to students of any institution of higher education now incorporated or hereafter to be incorporated under the laws of Congress or of the District of Columbia, to wit:

- One. Of the Library of Congress.
- Two. Of the National Museum.
- Three. Of the Patent Office.
- Four. Of the Bureau of Education.
- Five. Of the Bureau of Ethnology.
- Six. Of the Army Medical Museum.
- Seven. Of the Department of Agriculture.
- Eight. Of the Fish Commission.
- Nine. Of the Botanic Gardens.
- Ten. Of the Coast and Geodetic Survey.
- Eleven. Of the Geological Survey.
- Twelve. Of the Naval Observatory.

Approved, April 12, 1892.

An act to authorize the appointment of an inspector of plumbing in the District of Columbia, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Commissioners of the District of Columbia and their successors be, and they hereby are, authorized and empowered to make, modify, and enforce regulations governing plumbing, house drainage, and the ventilation, preservation, and maintenance in good order of house sewers and public sewers in the District of Columbia, and also regulations governing the examination, registration, and licensing of plumbers and the practice of the business of plumbing in said District; and any person who shall neglect or refuse to comply with the requirements of the provisions of said regulations after ten days' notice of the specific thing required to be done thereunder, within the time limited by the Commissioners for doing such work, or as the said time may be extended by said Commissioners, shall upon conviction thereof be punishable by a fine of not more than two hundred dollars for each and every such offense, or in default of payment of fine, to imprisonment not to exceed thirty days.

SEC. 2. That the said Commissioners and their successors be, and they hereby are, authorized and empowered to require every person licensed to practice the business of plumbing in the District of Columbia, before engaging in the said business, to file a bond in such amount not exceeding the sum of two thousand dollars and with such number of sureties as the said Commissioners shall determine, conditioned upon the faithful performance of all work in compliance with the plumbing regulations, and that the District of Columbia shall be kept harmless from the consequence of any and all acts of the said licensee during the period covered by the said bond.

SEC. 3. That the said Commissioners and their successors be, and they hereby are, authorized to establish and charge a fee for each permit granted to connect any building, premises, or establishment with any sewer, water, or gas main, or other underground structure located in any public street, avenue, alley, road, highway, or space; and also to establish and charge a fee for each permit granted to make an excavation in any public street, avenue, alley, highway, road, or space for the purpose of repairing, altering, or extending any house sewer, water main, or gas main, or other underground construction. The fees authorized by this section shall be paid to the collector of taxes of the District of Columbia and by him deposited in the Treasury of the United States, one half to the credit of the United States and one half to the credit of the District of Columbia.

SEC. 4. That the inspector of plumbing and his assistants shall be under the direction of said Commissioners, and they are hereby empowered accordingly, to inspect or cause to be inspected, all houses when in course of erection in said district, to see that the plumbing, drainage, and ventilation of sewers thereof conform to the regulations hereinbefore provided for; and also at any time, during reasonable hours, under like direction, on the application of the owner, or occupant, or the complaint under oath of any reputable citizen to inspect or cause to be inspected any house in said district, to examine the plumbing, drainage, and ventilation of sewers thereof, and generally to see that the regulations hereinbefore provided for are duly observed and enforced.

SEC. 5. That all laws or parts of laws inconsistent herewith be, and they hereby are, repealed.

Approved, April 23, 1892.

An act to extend the time for making an assessment of real estate in the District of Columbia, outside the cities of Washington and Georgetown.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the time fixed for the return of assessment by section seven of the act to levy an assessment of real estate in the District of Columbia in the year eighteen hundred and eighty-three, and every third year thereafter, approved March third, eighteen hundred and eighty-three, be, and the same is hereby, extended to the first day of December, eighteen hundred and ninety-two, as to all the real estate

in the District of Columbia outside the cities of Washington and Georgetown.

SEC. 2. That the time fixed by section nine of said act, for the meeting of the board of equalization and review be, and the same is hereby, postponed until the first day of December, eighteen hundred and ninety-two, so far as it refers to that part of the District of Columbia outside of Washington and Georgetown, and the said equalization and review shall be finally completed on or before December thirty-first, eighteen hundred and ninety-two.

SEC. 3. That section four of the act entitled "An act for the support of the government of the District of Columbia for the fiscal year ending June thirtieth, eighteen hundred and seventy-eight, and for other purposes," approved March third, eighteen hundred and seventy-seven, be, and the same is hereby, amended so as to make the whole tax levied under the assessment of that portion of the District of Columbia outside of Washington and Georgetown herein provided for, due and payable on the first day of May, eighteen hundred and ninety-three, instead of one half on the first day of November, eighteen hundred and ninety-two, and one half on the first day of May, eighteen hundred and ninety-three, as by existing law: *Provided*, That these amendments shall not extend beyond the fiscal year ending June thirtieth, eighteen hundred and ninety-three.

SEC. 4. That the provision that the assessors shall not reduce the aggregate value of the real property below the aggregate value thereof as made and returned by them, contained in section nine of the act of March third, eighteen hundred and eighty-three, aforesaid, be, and the same is hereby repealed.

Approved, April 28, 1892.

An act to empower the Commissioners of the District of Columbia to grant respites and pardons in certain cases.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Commissioners of the District of Columbia may grant pardons and respites for offenses against the late corporation of Washington, the ordinances of Georgetown and the levy court, the laws enacted by the legislative assembly, and the police and building regulations of the District.

Approved, April 28, 1892.

An act to amend the act giving the approval and sanction of Congress to the route and termini of the Anacostia and Potomac River Railroad in the District of Columbia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act giving the sanction and approval of Congress to the route and termini of the Anacostia and Potomac River Railroad, approved February eighteenth, eighteen hundred and seventy-five, subsequently amended, be, and the same is hereby, amended so as to authorize the said company to lay tracks and switches and run cars as follows: From the intersection of its tracks at Ninth street with B street northwest north on Ninth street to G.

street northwest over the tracks of the Metropolitan Railway Company; thence west on G. street northwest to Eleventh street northwest over the tracks of Eckington and Soldiers' Home Railway Company; thence south on Eleventh street to E. street northwest, and east on E street to Ninth street on the tracks of the Capitol, North O Street and South Washington Railway Company; thence south on Ninth street to B street on the tracks of the Metropolitan Railway Company. That in construction of its tracks herein authorized the pattern of the rail used shall be the standard flat grooved rail and approved by the Commissioners of the District of Columbia, and that all rails laid under authority of this act shall be on a level with the surface of the street: *Provided*, That the said company shall commence work within three months and complete the same within six months from the approval of this act.

SEC. 2. That, should any part of the track extension herein authorized coincide with portions of any other duly incorporated street railway in the District of Columbia, but one set of tracks shall be used when, on account of the width of the street or for other sufficient reason, it shall be deemed necessary by the Commissioners of the District; and the relative conditions of use and of chartered rights may be adjusted upon terms to be mutually agreed upon between the companies, or, in case of disagreement, by the supreme court of the District of Columbia, on petition filed therein by either party and on such notice to the other party as the court may order.

SEC. 3. That this Road shall exchange tickets with other roads where their tracks unite.

SEC. 4. That Congress may at any time amend, alter, or repeal this act.

Approved, April 30, 1892.

Legal Notices.

FIRST INSERTION.

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of JOHN I. GREGG, late of the District of Columbia, deceased.

All persons having claims against the said deceased, are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber on or before the 22d day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of April, 1892.

HARRIET C. GREGG,
Cr. JOS. K. McCAMMON,
JAS. H. HAYDEN,

1420 F St., n. w.

22 Jos. K. McCammon and Jas. H. Hayden, Proctors.

This is to Give Notice

That the subscriber of District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of SARAH M. RITTENHOUSE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of May, 1892.

RANDALL HAGNER,

22 Randall Hagner, Proctor. 406 5th street, n. w.

Legal Notices

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Robert F. Allen vs. Augusta Harris, Letitia B. Galvin and Maria L. Williams.

In Equity. No. 13,806.

On motion of the plaintiff, by Mr. W. Preston Williamson, his counsel, it is, this 28th day of May, 1892, ordered that the defendant, MARIA L. WILLIAMS, cause her appearance to be entered herein on or before the first rule-day of this court occurring 40 days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for the sale of sub-lot 68, in square 366, in this City and District, and for partition between the heirs of the late Letitia Allen.

This notice is to be published in the Washington Law Reporter and the Washington Post.

A. B. HAGNER, Asso. Justice.

A true copy. Test: J. R. Young, Clerk.

22 By M. A. Clancy, Asst. Clerk.

[Filed May 28, 1892. J. R. Young, Clerk.]

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of PAUL BOLL, late of the District of Columbia, deceased; on the 8th day of January, A. D. 1891.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 11th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of January, 1892.

ANNA MARIA BOLL,

22 Eugene J. B. O'Neill, Proctor. 1213 G St., n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Charles A. Elliot et al. } vs. } Equity, No. 13,730.

Clara Ross et al.

David E. McComb, trustee, having reported to the court a sale of sub-lot 30 in Charles W. King's subdivision of lot 5, square No. 684, involved in this suit, to Henry Walter for the sum of \$3,150, and that the said Henry Walter has complied with the terms of sale on his part, it is this 1st day of June, 1892, ordered that the said sale be hereby ratified and confirmed, unless cause to the contrary be shown on or before the 25th day of June, 1892.

Provided a copy of this order be published in the Washington Law Reporter and in the Evening Star once a week for three weeks prior to said date.

A. B. HAGNER, Asso. Justice.

A true copy. Test: J. R. Young, Clerk.

22 By M. A. Clancy, Asst. Clerk.

[Filed June 1, 1892. J. R. Young, Clerk.]

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of CHARLES C. FAIRFIELD, late of Humboldt Co., California, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under its hand this 31st day of May, 1892.

WASHINGTON LOAN & TRUST CO.

By B. H. WARNER, Pt.

22 John B. Larner, Proctor.

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of NATHAN BEACH CLARK, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of May, 1892.

HELEN W. CLARK,

Care Carusi & Miller, 438 La. Ave., n. w.

22 Carusi & Miller, Proctors.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, Letters testamentary on the personal estate of JAMES ANDERSON, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of May, 1892.

CHAS. A. WELLS,
Hyattsville, Md.

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of JOHN GIBNEY, late of Ft. Maginnis, Montana, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of May, 1892.

ALLAN RUTHERFORD,
Room 123, Atlantic Bldg.

This is to Give Notice

That the subscriber of Troy, N. Y., has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of THADEUS W. PATCHIN, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of May, 1892.

JESSIE P. MANN,
22 C. M. & H. S. Matthews, Proctors. 2505 K St., D. C.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Elizabeth Davis et al. } vs. { Equity, No. 13,735.
Daniel Jackson et al.

L. Cabell Williamson and Jackson H. Ralston, trustees appointed to make sale of the real estate described in the above entitled cause, having reported that they have sold the east twenty (20) feet front by the depth of lot eleven (11) in square eight hundred and eighteen (818), Washington, D. C., to John W. Bayne, for the sum of three thousand eight hundred and twenty-five (\$3,825) dollars, it is this 27th day of May, A. D. 1892, adjudged, ordered and decreed, that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 27th day of June, A. D. 1892.

Provided that a copy of this decree be published in the Washington Law Reporter once in each week for three successive weeks prior to said date.

CHARLES P. JAMES, Justice.

A true copy. Test: J. R. Young, Clerk.
By M. A. Clancy, Asst. Clerk.
[Filed May 27, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Thomas W. Walter et al. } vs. { Equity, No. 12,940.
Eleanor A. Walter et al.

The trustees appointed in this cause to make of lot numbered thirty-eight of H. M. Schneider's subdivision of original lot numbered five in square numbered thirty-seven, having reported the sale thereof to Harry M. Schneider for the sum of six thousand four hundred and seventy-five dollars (\$6,475), it is, this 27th day of May, 1892, ordered, adjudged and decreed that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 21st day of June, 1892.

Provided a copy of this order be published for three successive weeks prior to said date in the Washington Law Reporter.

CHARLES P. JAMES, Justice.

A true copy. Test: J. R. Young, Clerk.
By M. A. Clancy, Asst. Clerk.
[Filed May 27, 1892. J. R. Young, Clerk.]

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,**

The 26th day of May, 1892.

Arthur E. Bateman, Jabez A. Bostwick and George H. Sullivan Administrator of Algernon S. Sullivan, deceased,
vs.

Harvey Durand, Thomas W. Pearsall, Stephen V. White, William W. Dudley and John E. Seal.

In Equity, No. 13,646. Eq. Docket, 88.

On motion of the plaintiffs, by Mr. H. H. Wells, their solicitor, it is ordered that the defendants, Harvey Durand, Thomas W. Pearsall and Stephen V. White, who are non-residents and against whom subpoenas have been issued and returned not found, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to close up and obtain final settlement of a trust existing between the parties to said suit in respect to certain real property situate in the District of Columbia, known as Scott's Ordinary and Terra Firma, on the Tennyson Road and sometimes known as the Varnell property and more fully described in the bill filed in this cause, and for the further purpose of obtaining a discovery and account from the defendant, Harvey Durand, of the moneys received by him, part of the proceeds of the sale of the said premises that have come into his possession, part of said trust fund, and what disposition was made by him thereof, and especially of the sum of \$28,500, and in what other property the same was invested by him.

This notice shall be published in the Evening Star and the Washington Law Reporter.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
By M. A. Clancy, Asst. Clerk.

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court Business, letters testamentary on the personal estate of OLIVER W. LONGAN, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under its hand this 28th day of May, 1892.

THE NATIONAL SAFE DEPOSIT, SAVINGS AND TRUST COMPANY of the District of Columbia.
By THOMAS R. JONES,
22 John C. Wilson, Proctor. 3d Vice Pres.

SECOND INSERTION.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,**
The 25th day of May, 1892.

John Hoffman Smith } vs. { No. 18,899. Docket, 18.
Suzannah Smith.

On motion of the plaintiff, by Mr. Charles Bendheim, his solicitor, it is ordered that the defendant, SUSANNAH SMITH, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the case will be proceeded with as in case of default.

The object of this suit is to obtain a decree of divorce from the bond of matrimony subsisting between the complainant and defendant on the ground of desertion.

This order to be published in the Evening Star and Washington Law Reporter.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
21 By L. P. Williams, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business.

May 25, 1892.

In the case of Job Barnard, administrator of JOHN J. KILLAFOYLE, deceased, the administrator aforesaid has, with the approval of the court, appointed Friday, the 17th day of June, A. D. 1892, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: L. P. WRIGHT,
21 Register of Wills for the District of Columbia.
No. 4046. Ad. Doc. 18.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

Guy V. Henry

vs.

A. Thomas Bradley, Trustee, Christopher C. Walcott, Elizabeth W. Walcott, Maria G. Bradley, and Richard B. L. Macrae, guardian et al.—In Equity. No. 7186.

On motion of the plaintiff by O. D. Barrett, his solicitor, it is ordered that the defendants, Christopher C. Walcott, Elizabeth W. Walcott, Maria G. Bradley and Richard B. L. Macrae, guardian of Powell M. Bradley, Frederick W. Bradley and Maria C. Bradley, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to revive the suit of Smith Thompson and others, vs. A. Thomas Bradley, trustee, and others, Equity, No. 7186, as to the interest claimed by the plaintiff, Mrs. Arietta L. Henry, now deceased, in the name of Guy V. Henry, sole heir at law of said Arietta L. Henry.

This notice to be published in the Washington Post as well as the Washington Law Reporter.

[SEAL.] A. B. HAGNER, Associate Justice.
True Copy. Test: J. R. Young, Clerk, &c.
By M. A. Clancy, Asst. Clerk.

This is to Give Notice

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of JOSEPH T. STEVENS, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscribers, on or before the 11th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 11th day of May, 1892.

HENRY M. STEVENS,

LYNDON H. STEVENS.

21 Henry E. Davis, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 24th day of May, 1892.

Anna Seifriz } vs. } No. 18,809. Eq. Doc. 83.
Paul Seifriz, }

On motion of the complainant, by Messrs. Worthington and Head, her solicitors, it is ordered that the defendant, PAUL SEIFRIZ, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day, otherwise the case will be proceeded with as in case of default.

Provided that a copy of this order be published once a week for three successive weeks before said return day in the Washington Law Reporter and in the Evening Star newspaper published in the City of Washington.

The object of this suit is to obtain a decree of divorce from the bond of marriage on the ground of desertion.

A. B. HAGNER.
A true copy. Test: J. R. Young, Clerk.
By M. A. CLANCY, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,**Holding a Special Term for Orphans' Court Business.**

This 25th day of May, 1892.

In re estate of ANNA L. BOICE, late of Washington, D. C. Application having been made for letters of administration on the estate of said Anna L. Boice, deceased, by Ada V. Storey, who prays that the Washington Loan & Trust Co., be appointed administrator.

Notice is hereby given to all concerned to appear in this court on Friday June 17th, 1892, at one o'clock p.m., to show cause if any exist against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter and Evening Star once a week in each of three successive weeks before said day.

By the Court: A. B. HAGNER, Justice.
Test: L. P. WRIGHT.
Register of Wills, D. C.
John B. Larner, Proctor for applicant.

21 No. 5004. Adm'n. Doc. 18.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of HENRY C. MCCORMEY, late of the District of the Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 17th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of May 1892.

HENRY E. DAVIS,
Fendall Building,

21 Henry E. Davis, Proctor. 344 D St., n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court Business, letters of administration on the personal estate of WILLIAM E. ROBERTS, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of May, 1892.

JAS. S. EDWARDS,
Care Edwards & Barnard,

21 Edwards & Barnard, Proctors. 500 5th St., n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphan's Court business, letters testamentary on the personal estate of ALEXANDER LEADINGHAM, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 21st day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of May, 1892.

CLARA L. LEADINGHAM,
1227 6th St., n. w.

This is to Give Notice

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court Business, letters of testamentary on the personal estate of HENRY B. JAMES, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 23d day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23d day of May, 1892.

GERTRUDE JAMES,
H. K. LEAVER,

21 W. F. Mattingly, Proctor. 1528 16th St., n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,**Holding a Special Term for Orphans' Court Business,**

This 24th, of May 1892.

In re estate of EMILY C. BRENT, late of Washington, D. C.

Application having been made for letters of administration on the estate of said Emily C. Brent, deceased by Mary Virginia Chilton:

Notice is hereby given to all concerned to appear in this court on the 24th day of June, 1892, at eleven o'clock a. m., to show cause if any exist against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter, and Washington Post once a week in each of three successive weeks before said day.

By the Court: A. B. HAGNER, Justice.
A true copy. Teste: L. P. WRIGHT.
Register of Wills, D. C.
J. J. Darlington, Proctor for applicant.

21 No. 5003. Ad. Doc. 18.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of GEORGE G. CORNWELL, late of the District of Columbia, deceased. All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 18th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of May, 1892.

ELIZA N. CORNWELL,
HENRY P. GILBERT.

21 Henry H. Davis, Proctor.

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of WILLIAM W. BURNS, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23d day of May, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23d day of May, 1892.

PRISCILLA E. BURNS,
Care Dr. G. L. Magruder.

21 W. W. Boarman, Proctor. 515 Vt. Ave., n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business,

May 26, 1892.

In the case of Louis Behrens, executor of MARY STEUER-NAGEL, deceased, the executor aforesaid has, with the approval of the court, appointed Friday, the 24th day of June A. D. 1892, at one o'clock p. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
21 No. 4248. Ad. Doc. 16. Chapin Brown, Proctor.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, letters testamentary on the personal estate of ZADOC WILLIAMS, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23d day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23d day of May, 1892.

RUDOLPH EICHHORN,

21 R. Ross Perry, Proctor. No. 602 3d St., n. w.
Court to the supreme court of the District of Columbia, who shall hear and determine summarily the matter in due form of law, and adjudge to the proper party the amount of compensation to be paid therefor. Whenever more than one of the tracks of said railroad company shall be constructed on any of the streets, avenues, or other public highways in the District of Columbia, the width of space between the two tracks shall not exceed four feet, unless otherwise especially ordered by the Commissioners of the District of Columbia.

SEC. 3. That the Rock Creek Railway Company and the Eckington and Soldiers' Home Railway Company shall have the power to make any contracts or agreements that may be necessary to enable the said companies to run the cars of each or either company over the tracks of the other company, and also to contract for

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,**

Holding a Special Term for Orphans' Court Business.

This 18th of May, 1892.

In re estate of JOHN WHEELER, late of Battery "D," Third United States Artillery.

Application having been made for letters of administration on the estate of said John Wheeler, deceased, by Edward A. Bowers:

Notice is hereby given to all concerned to appear in this court on Friday June 17th 1892, at one o'clock p. m., to show cause if any exist against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter, and Evening Star once a week in each of three successive weeks before said day.

By the Court: A. B. HAGNER, Justice.
A true copy. Teste: L. P. WRIGHT,

Register of Wills, D. C.

Edw. A. Bowers,

20 No. 4206. Ad. Doc. 17. Proctor for applicant.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Louis Kurtz, Sr. } vs. { In Equity. No. 11,234.

Louis Kurtz, Jr., et al. }

ORDERE NISI.

Your trustee Robert H. T. Leipold, having reported herefore that he had been unable after diligent endeavor to make sale at public auction of the property described in the proceedings in this cause, to wit: The south fifteen (15) feet from front to rear of lot No. 13 in square No. 454, because the highest bid therefor being the sum of ten thousand and five hundred dollars, was, in his judgment, not an adequate price for the said real estate, and the said trustee having lately by his additional report filed herein on the 13th day of May, A. D. 1892, reported an offer by Daniel Ballauf to purchase the said real estate at private sale at and for the sum of fifteen thousand dollars, it is therefore, upon consideration of said trustee's report, this 18th day of May, A. D. 1892, adjudged, ordered and decreed that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 18th day of June, 1892.

Provided a copy of this order be published in the Washington Law Reporter and in the Evening Star once each week for successive weeks before said day.

Test: A. B. HAGNER, Justice.
A true copy. Teste: J. R. Young, Clerk.
20 No. 4244. Ad. D. 16. By M. A. Clancy, Asst. Clerk.
[Filed May 13, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

May 18th, 1892.

In the case of William T. Jones, executor of the will of MARY BLAKE JONES, deceased, the executor aforesaid has, with the approval of the court, appointed Friday, the 17th day of June, A. D. 1892, at one o'clock p. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
20 No. 4234. Ad. D. 16. C. M. & H. S. Matthews, Proctors.

Florence Galicher, et al. } vs. { No. 12,813. Eq. Docket 33.

William H. Pope, et al. }

On motion of the plaintiffs, by Mr. James F. Hood, their solicitor, it is ordered that the defendant, ELIZABETH S. POPE, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to have partition of the lands belonging to the estate of William Pope, who lately died intestate.

By the Court: A. B. HAGNER, Justice, &c.
True copy. Teste: J. R. Young, Clerk, &c.
20 By M. A. Clancy, Asst. Clerk.

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WASHINGTON, D. C., - - - JUNE 9, 1892

Act of Congress.

An act to amend the charter of the Rock Creek Railroad Company.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Rock Creek Railroad Company be, and is hereby, authorized to extend its road from its present terminus on U street to Florida avenue, thence along Florida avenue to North Capitol street: *Provided*, That it shall run on the same track with the Metropolitan Railroad Company between Ninth and Seventh streets. Said company is authorized to extend a branch road from a point on its line in Cliffburne tract across the Adams Mill road to Kansas street, thence along Kansas street to Ontario avenue, thence along or adjacent to Ontario avenue to the east line of the Zoological Park, on such line as shall be approved by the Commissioners of the District of Columbia. That the extension and branch herein provided for shall be subject, in all respects, to the acts of Congress granting and amending the charter of the Rock Creek Railway Company as fully as if such acts were incorporated herein.

SEC. 2. That whenever the route of the foregoing extension coincides with the track occupied by the Metropolitan Railroad Company, both companies shall use the same track upon such fair and equitable terms as may be agreed upon by said companies; and in the event that said companies shall fail to agree upon equitable terms, either of said companies may apply by petition to the supreme court of the District of Columbia, who shall hear and determine summarily the matter in due form of law, and adjudge to the proper party the amount of compensation to be paid therefor. Whenever more than one of the tracks of said railroad company shall be constructed on any of the streets, avenues, or other public highways in the District of Columbia, the width of space between the two tracks shall not exceed four feet, unless otherwise especially ordered by the Commissioners of the District of Columbia.

SEC. 3. That the Rock Creek Railway Company and the Eckington and Soldiers' Home Railway Company shall have the power to make any contracts or agreements that may be necessary to enable the said companies to run the cars of each or either company over the tracks of the other company, and also to contract for

and use the power of each or either company to propel the cars of the other company. The said extension and branch shall be completed within one year and a half from the passage of this act.

SEC. 4. That the streets or avenues opened under the provisions of this act shall conform to the general plans for the extension of the streets and avenues of the District of Columbia, and shall be laid out under the direction of the Commissioners of the District of Columbia.

SEC. 5. That Congress reserves the right at any time to alter, amend, or repeal this act.

Approved, April 30, 1892.

The Supreme Court of this State should be commended in their efforts to secure the observance of professional courtesy in the conduct of trials. Several decisions have recently been reversed, and new trials ordered, where counsel have used unbecoming language in the cross-examination of witnesses, and made extraneous statements in their arguments, which tend to prejudice the minds of the jurors in arriving at their decisions. A prejudice too often exists under ordinary circumstances, and justice demands that the merits of the case under consideration, and those only, should be considered, and in a fair and impartial manner.

Even the ruling of the court cannot in many cases cure such errors, nor prevent their harmful effects. In *Thompson v. T., A. & N. M. Rwy. Co.*, a brief abstract of which is given on another page of this issue of the Journal, Judge Grant says: "This court has frequently condemned such practices, and has reversed cases for remarks by counsel less harmful than these. The object of trials in courts is to reach justice. It cannot be said to have been reached where such language is used. I think trial courts, of their own motion, should set aside verdicts where such means have been resorted to."

Courts of other States have rendered similar opinions. In *Commonwealth v. Brunner*, a very recent Pennsylvania case, reported in *Pittsburg Legal Journal*, April 20, the court very consistently held that it makes no difference whether the statements so made actually prejudiced the jury or not. If they were calculated to improperly influence the minds of the jury it is sufficient cause for a new trial.—*Michigan Law Journal*.

THE royal navy of England hath ever been its greatest defence and ornament; it is its ancient and natural strength—the floating bulwark of our island.—*Blackstone*.

Magna Charta is such a fellow that he will have no sovereign.—*Coke*.

**Supreme Court of the District of Columbia,
IN GENERAL TERM.**

**THE UNION RIVER LOGGING RAIL-
ROAD COMPANY,**
v.

**JOHN W. NOBLE, SECRETARY OF THE
INTERIOR, AND THOMAS H. CAR-
TER, COMMISSIONER OF THE GEN-
ERAL LAND OFFICE.**

1. The Act of Congress of March 3, 1875, (18 Stat., 482,) granted right of way through the public lands of the United States only to "railroads," and only to those railroads whose maps of definite location should be approved by the Secretary of the Interior.
2. The word "railroad" was undoubtedly used by the Legislature in its ordinary sense—that is to say, it designated common carrier railroads. The Secretary of the Interior was charged, therefore, to consider, before approving its location of route, whether the applicant came within the designation of the Statute.
3. When such an application for right of way is made by a railroad company already carrying on business, the Secretary may inquire and consider whether, as a matter of fact, it is a road for private use only or for public use, even though it may have corporate authority to act as a common carrier and to charge tolls.
4. The statute clearly intends that when the Secretary is satisfied as to the character of the company and shall have approved its location of route, the construction of a road through the public lands may proceed. The applicant is thereby authorized and invited to expend its moneys and to make permanent structures.
5. A statute which thus authorizes steps to be taken in consequence of the Secretary's conclusion, can have no other intent than that his conclusion shall be, so far as any action on his part is concerned, a permanent foundation for what is built upon it. To that end the statute contemplates that the Secretary shall exhaust inquiry before he concludes, and that he shall not first conclude and then disturb, by a new inquiry, what he has caused to be done.
6. When a statute authorizes one person to ascertain a fact and then authorizes another to act upon such ascertainment, its intent is that the action of the former shall be a perfect foundation for the action of the latter, so far as any further inquiry by the former is concerned.
7. So far as the question of any existing legal title is involved, the principle of *res judicata* applies to any new inquiry into the qualifications of the applicant for right of way. The Secretary must be regarded as a special tribunal for determining the applicant's qualifications. Neither he nor any successor could, upon subsequent inquiry into the same matter, set aside and annul the approval of the location on the ground that it had been obtained by fraud.
8. Where the action of a predecessor is plainly void, it may be that his successor may act on the assumption that nothing has been done. But the proceedings of Secretary Vilas were not a nullity; at worst they were only voidable, and can be undone only by judicial proceedings directly instituted for that purpose.

In Equity. No. 18,503. Decided May 23, 1892.

F. D. MCKENNEY, Esq., for complainant.
W. M. A. MAURY, Esq., Assistant Attorney General, for respondents.

Mr. Justice JAMES delivered the opinion of the Court:

This is a bill to restrain the Secretary of the Interior and the Commissioner of the General Land Office from molesting the complainant's right of way through certain lands of the United States granted to it under the Act of March 3, 1875. 18 Stat., 482.

The first section of that act provides: "That the right of way through the public lands of the United States is hereby granted to any railroad company duly organized under the laws of any State or Territory, except the District of Columbia, or by the Congress of the United States, which shall have filed with the Secretary of the Interior a copy of its articles of incorporation, and due proofs of its organization under the same, to the extent of one hundred feet on each side of the central line of the said road; also the right to take from the lands adjacent to the line of said road material, earth, stone, and timber necessary for the construction of said railroad; also ground adjacent to such right of way for station buildings, depots, machine shops, side tracks, turnouts, and water stations, not to exceed in amount twenty acres for each station, to the extent of one station for each ten miles of its road."

The fourth section provides: "That any railroad company desiring to secure the benefits of this act shall, within twelve months after the location of any section of twenty miles of its road, if the same be upon surveyed lands, and, if upon unsurveyed lands, within twelve months after the survey thereof by the United States, file with the register of the land office for the district where such land is located a profile of its road; and upon approval thereof by the Secretary of the Interior the same shall be noted upon the plats in said office; and thereafter all such lands over which such right of way shall pass shall be disposed of subject to such right of way: *Provided*, that if any section of said road shall not be completed within five years after the location of said section, the rights herein granted shall be forfeited as to any such uncompleted section of said road."

The bill states substantially the following case, as showing compliance with these requirements and the vesting in complainant of a right of way.

The code of the Territory of Washington, adopted in 1881, provided the manner in which companies for the purpose of

building and running railroads, should be incorporated and organized. In 1883 certain persons organized, in accordance with these provisions, a company called "The Union River Logging Railroad Company," whose business and objects, as stated in the articles, were to be "the building, running, &c., a railroad for the transportation of saw logs, piles, and other timber and wood and lumber, and to charge and receive compensation and tolls therefor." The route of this road was from tidewater in Lynch's Cove, at the head of Hood's Canal, to a point at or near the northeast corner of township 24 north of range 1 east, of the Willamette meridian. The company proceeded to construct and equip a railroad extending some four miles from Lynch's Cove, and to transport over it saw logs and other timber.

On the 29th of December, 1885, certain other persons purchased from its then stockholders the whole of the capital stock of the company and took control of its franchises, property and business. Afterwards, on the 17th of August, 1888, these new stockholders, in pursuance of authority granted by the Act of 1881, filed supplemental articles of incorporation as follows:

"First. To construct and equip a railroad and telegraph line from a convenient point on tidewater on Lynch's Cove, at the head of Hood's Canal, in Mason County, Washington Territory, and running thence in a general northeasterly direction by the most practicable route to a convenient point on tidewater on Dye's Inlet, in the county of Kitsap, in said Territory; and also a branch from said line, at some convenient point thereon between Lynch's Cove and Dye's Inlet, and running thence in a general northerly direction, by the most practicable route to or near the town of Seabeck on Hood's Canal, in said county of Kitsap; and also a branch from some convenient point on the line of said road between said Lynch's Cove and Dye's Inlet, and running in a general northeasterly direction, by the most practicable route, to tidewater at or near Port Orchard, in said county of Kitsap; and also to construct and equip such other branches to said railroad and telegraph line as may be necessary for the proper and profitable management or extension of the business of said corporation.

"Second. To maintain and operate said railroad and branches and *carry freight and passengers thereon and receive tolls therefor.*"

* * * * *

In the autumn of 1888, after the filing of

these supplementary articles of incorporation, plaintiff's attention was called to the fact that the Act of Congress above referred to required that any railroad company which should propose to avail itself of the right of way and other privileges granted by that act, should previously file with the Secretary of the Interior a copy of its articles of incorporation, together with due proofs of its organization. Thereupon, on the 5th of January, 1889, it filed with the register of the land office at Seattle the following papers, duly certified and sworn to, namely, a copy of its articles of incorporation; a copy of the territorial law under which the company was organized; a certificate of the Secretary of the Territory that the articles of incorporation had been so filed in his office, with the date thereof; an official certificate by the secretary of the company of its organization and of the copy of the articles filed with the Secretary of the Interior; a true list of the names and designations of its officers at that date, and a map showing the termini of the road, its length, and its route over the public lands according to the public surveys. This was done in accordance with the directions of a circular for that purpose issued by the Secretary of the Interior on the 7th of November, 1879.

On the 10th of January, 1889, the register at Seattle transmitted these papers to the Commissioner of the General Land Office, and he in turn, on the 28th of the same month, transmitted them to the Secretary of the Interior, at the same time approving them and recommending that they be received and placed on file. On the 29th of the same month they were approved in writing by the Secretary of the Interior—at that time William F. Vilas, Esq., and were ordered to be filed. They were accordingly so filed, and the plaintiff was notified thereof.

Afterwards, in the spring of the year, the plaintiff constructed its line for three miles beyond the point to which it had previously extended, located at intervals a better line of road, made and ballasted a new road bed of standard gauge, and substituted steel rails and another locomotive for the rails and equipments which had sufficed for the limited purposes specified in its original articles of incorporation.

On the 13th of June, 1890, a copy of an order by John W. Noble, Esq., Secretary of the Interior, was served upon the plaintiff, directing it to show cause why the

above "approval of its articles of incorporation and maps of definite location should not be revoked and annulled." Thereupon the plaintiff, protesting at the same time that such revocation and annulment was beyond the power of the Secretary, did show cause as directed; but, nevertheless, on the 2d of June, 1889, George Chandler, Esq., then the acting Secretary of the Interior, made the rule to show cause absolute, and ordered "that the approval of the Secretary of the Interior, dated of the 29th of January, 1889, of the maps of definite location or profile of the Union River Logging Railroad Company be, and the same is hereby annulled, cancelled, set aside, and held for naught," and directed the Commissioner of the General Land Office "to carry out this order by causing it to be entered upon the appropriate plats and records of his office and the proper local land office."

The bill avers that the defendants are about to carry out this order, and prays that it may itself be declared void, and that the defendants may be enjoined not to molest the plaintiff's enjoyment of the right of way and of the privileges secured to it by the approval and order of January 29th, 1889.

The joint answer of the defendants admits the truth of the allegations above set forth in substance, and then proceeds as follows:

"As to the remaining paragraphs of the bill, these respondents say that it became known to them that the complainant company was not engaged in the business of a common carrier of passengers and freight at the time of its application for admission to the privileges of the Act of Congress of March 3, 1875, Chap. 152, but that it was engaged at the time in the transportation of logs for the private use and benefit of the several persons composing the said company; and thereupon your respondent, John W. Noble, Secretary of the Interior, being advised that a railroad company carrying on a merely private business was not such a railroad company as is contemplated by the said act of Congress, deemed it his duty to take proper steps to vacate and annul the action of the Honorable W. F. Vilas, Secretary of the Interior, of January 29, 1889, approving the application of the complainant company under the said act of Congress, and the maps of definite location accompanying the same; and to that end this respondent caused notice to be

given to the complainant company to show cause why the said action of the Secretary of the Interior should not be vacated and annulled."

Secretary Noble states that he had approved the order of Acting Secretary Chandler annulling the action of Secretary Vilas, and had directed the Commissioner to carry into effect such annulling order. He further states that he was advised that he had the right to revoke the action of his predecessor as having been done improvidently and on false suggestions and without authority under the said statute.

It further appears by the answer that an application for a rehearing had been filed with it and is now pending and undecided.

Some statements, or rather suggestions of facts were made at the argument to which we have not thought it proper to allude. As this case was submitted on the bill and answer and accompanying exhibits we know only what is there shown; and it is because the facts appear only in this way that we have stated the contents of the pleadings at such length. The question to be considered by us is, whether the facts thus shown entitle the complainant to an injunction.

In that inquiry the particular questions are, first: what matters were to be considered by the Secretary of the Interior when the complainant submitted its application for a right of way; second, what was the effect of his action in approving that application; third, what was the power of his successor if the latter should be of opinion that the original approval had been made improvidently, or upon false suggestions or representations?

In the first place, the Act of March 3, 1875, granted right of way through the public lands of the United States only to "railroads" and only to those railroads whose maps of definite location should be approved by the Secretary of the Interior. The word "railroad" was undoubtedly used by the Legislature in its ordinary sense; that is to say, it designated common carrier railroads. The Secretary of the Interior was charged therefore to consider, before approving its location of route, whether the applicant came within the designation of the statute. When such an application for right of way is made by a railroad company already carrying on business, he may inquire and consider whether, as a matter of fact, it is a road for private use only or for public use, even though it may have

corporate authority to act as a common carrier and to charge tolls. In other words, he is authorized to consider whether the application is made by a company which is only nominally and not in fact of the kind designated.

When the Secretary shall have considered these questions what effect does the statute intend to give to his conclusion? It clearly intends that when he is satisfied as to the character of the applicant and shall have approved its location of route, the construction of a road through the public lands may thereupon proceed. The applicant is thereby authorized and invited to expend its moneys and to make permanent structures. Whatever might be said of any other act concerning the public lands, a statute which thus authorizes steps to be taken in consequence of the Secretary's conclusion can have no other intent than that his conclusion shall be, so far any action on his part is concerned, a permanent foundation for what is built upon it. To that end the statute contemplates that he shall exhaust inquiry before he concludes, and that he shall not first conclude and then disturb, by new inquiry, what he has caused to be done. It is quite unnecessary to rely, at this point, upon the analogies of *res judicata*. The particular principle which we mean here to enforce is one which applies in construing the intent of statutes. That principle is that, when a statute authorizes one person to ascertain a fact and then authorizes another to act upon such ascertainment, its intent is that the action of the former shall be a perfect foundation for the action of the latter, so far as any further inquiry by the former is concerned.

But, so far as the question of an existing legal title is involved, the principle of *res judicata* does apply to any new inquiry into the qualifications of the applicant for right of way. As we have already said, an inquiry into such qualifications was one of the very matters submitted to the Secretary by the mere fact of application. Indeed the respondent's own attitude is an assertion that such inquiry is part of the Secretary's business. He himself is asserting the duty of the Secretary of the Interior under this statute to consider whether the complainant was in good faith at the time of its application, a railroad within the meaning of the statute, and that is a concession that Secretary Vilas had the same power and was charged with the same duty. If, then, it was the duty of the Secretary to consider at

all the question of an applicant's qualification, we must regard him as a special tribunal for its determination. In *Steel v. Smelting Company*, 106th U. S., 447, (451), the Supreme Court held that such was the function of the officers of the Land Department as to all matters on which they must decide before issuing a patent; and there is no difference in principle between their action in granting a patent and their action in causing an easement to vest under this statute. In the case referred to the ground taken was that a patent was void because it had been obtained by "fraud, bribery, perjury, and subornation of perjury." The Court said of the Land Department that, "necessarily it must consider and pass upon the qualifications of the applicant, the acts he has performed to secure the title, the nature of the land, and whether it is of the class which is open to sale. Its judgment upon these matters is that of a special tribunal, and is unassailable except by direct proceedings for its annulment or limitation." It is particularly pertinent to the present inquiry that the court held that a department could not annul action which had caused title to pass, because it decision had been obtained by fraud.

In *Johnson v. Towsley*, 13 Wall, 73, (83), Mr. Justice Miller, speaking for the Court, declared it to be "the general doctrine that when the law has confided to a special tribunal the authority to hear and determine certain matters arising in the course of its duties, the decision of that tribunal within the scope of its authority, is conclusive upon all others. That the action of the Land Office in issuing a patent for any of the public land, subject to sale by pre-emption or otherwise, is conclusive of the legal title must be admitted under the principle above stated; and in all courts and in all forms of judicial proceedings, where this title must control, either by reason of the limited powers of the court or the essential character of the proceeding, no inquiry can be permitted into the circumstances under which it was obtained."

As we have already said, we can perceive no difference, so far as the conclusions of the special tribunal are concerned, between a grant effected by a patent and a grant of right of way effected by an entry in office records retained by the office. In both cases a legal right to the thing granted vests by means of the action of the special tribunal, and must remain vested until it shall be devested by proceedings having that ob-

ject in view and carried on by a competent tribunal.

According to these rulings of the Supreme Court, if the Secretary who approved complainant's application had authority to examine and determine whether it was in good faith a "railroad" within the statute, neither he nor any successor could, upon subsequent inquiry into the same matter, set aside and annul the approval of its location on the ground that it had been obtained by fraud. Title resulting from such approval cannot be retracted any more than title resulting from direct grant. If it be true that this title is voidable, it is in the complainant until it is avoided, and for the process the Secretary of the Interior has no equipment. The question of fraud, as a ground for devesting what has vested, is one *inter partes* and cannot be considered and determined *ex parte*. Until set aside the right of the complainant is property, and cannot be taken away except by due process of law. Of course it cannot be said that the *ex parte* inquiry and decision of the head of an executive department is such due process. Without power to compel attendance of witnesses or to afford cross-examination, he is not prepared to do the work of a court of equity. Fortunately the means of undoing frauds practiced on the executive departments are amply supplied. The judicial power of this Government completely supplements the necessities of its executive power, and by it alone can the proposed annulment be effected.

We have already considered the contention that the approval of location was simply void. Where the action of a predecessor is plainly void, it may be that his successor may act on the assumption that nothing has been done. The intimation of the Supreme Court in Schurz's Case, 102 U. S., 378, are to that effect. But the proceedings of Secretary Vilas were not a nullity; at worst, they are only voidable, and can be undone only by judicial proceedings directly instituted for that purpose.

Only the question of relief remains to be considered. We observe that the answer states that complainant's motion for a re-hearing is still pending and undecided. This may be a suggestion that respondent cannot now be supposed to threaten to carry out the order complained of; but on the other hand the answer admits the allegations contained in the first seventeen paragraphs of the bill, and one of these is an averment that the defendants are about to

carry out that order. Besides, we find the respondent insisting upon his right and duty to do so, and must therefore understand that he will do so if not restrained.

We grant accordingly a *writ of injunction* restraining the defendants from executing the order of June 2, 1891, and from in any way except by judicial proceedings, molesting the complainant in the enjoyment of the right of way and other privileges secured to it by the approval and order of January 29, 1889.

Book Reviews.

A TREATISE ON THE LAW OF DAMAGES BY CORPORATIONS, including cases *Damnum absque Injuria*. In two volumes. An Appendix to Volume II contains the several statutes relating to Injuries resulting in Death. By GEORGE E. HARRIS, of the Washington, D. C., Bar, late Attorney-General of Mississippi, one of the Reporters for the Supreme Court, Mississippi, author of "Harris' Contracts by Married Women," and "Harris' Law of Subrogation." THE LAWYERS' CO-OPERATIVE PUBLISHING CO., Rochester, N. Y., 1892.

The two volumes contain 1,350 pages, printed on good book paper in clear type. Every part of this work is faithfully done, and is amply verified by foot-note citations.

LAWYERS' REPORTS, *Annotated*. Books XIII and XIV. All Current Cases of General Value and Importance decided in the United States, State and Territorial Courts, with full Annotation. By ROBERT DESTY, *Editor*. Burdett A. Rich and Henry P. Farnham, Reporters, the Publisher's Editorial Staff, and the several Reporters and Judges of each Court, assisting in selection. Rochester, N. Y.: THE LAWYERS' CO-OPERATIVE PUBLISHING CO., 1891 and 1892.

These volumes, like their predecessors, are first-class, and should be in the library of every member of the profession who would keep up with the progress of the law.

The late Sir Thomas Chambers was not a wit, and laughter seldom entered the court over which he presided so solemnly. There is, however, one good story told of him in the Temple. It is to the effect that a prisoner, who was undefended, pleaded "guilty," and, counsel having been instructed to defend him at the last moment, withdrew the plea and substituted that of "not guilty," with the result that the jury acquitted him. In discharging the prisoner Sir Thomas is said to have remarked: "Prisoner, I do not envy you your feelings. On your own confession you are a thief, and the jury have found that you are a liar."—*London Star*.

Supreme Court of the United States.

JOHN GLENN, TRUSTEE, PLAINTIFF IN ERROR,
v.

J. CARTER MARBURY.

1. In an action to recover from a stockholder moneys assessed upon the stock of a corporation, the Statute of Limitations is not pleadable in the District of Columbia, until three years have elapsed after the call or assessment upon the stock.
2. The making of the call or assessment by the Court, for the company, does not, in the absence of some statutory provision on the subject, change the rule that a demand upon the stockholder to meet a call or assessment, by competent authority, must be enforced in the name of the person or corporation holding the legal title to the stock subscription, and to whom the promise of the stockholder was made.
3. The present suit cannot, consistently with the principles of the common law—which is the law upon the question for the District of Columbia—be maintained by the plaintiff in his own name, as trustee.
4. A chose in action is not assignable so as to authorize the assignee to sue at law, in his own name, unless the right to do so is given by a statute, or by settled law, in the jurisdiction where the suit is brought. This is the well-established rule of the common law.

Decided May 16th, 1892.

Mr. Justice HARLAN delivered the opinion of the Court:

IN ERROR to the Supreme Court of the District of Columbia.

This action at law was brought, March 22 1889, by John Glenn, in his capacity as substituted trustee in a certain deed of trust made by the National Express and Transportation Company, a corporation of Virginia; also, as trustee by virtue of an order passed by the chancery court of the city of Richmond, Virginia, in a suit in equity brought by William W. Glenn, suing on behalf of himself and others, creditors of that corporation. Its object was to obtain a judgment against the defendant, Marbury, for the sum alleged to be due from him under an order, in the above cause, making an assessment and call on subscribers to the stock of that company.

The facts necessary to be stated in order to show fully the grounds of the defense are as follows:

In August 1866, Josiah Reynolds, a citizen of Maryland and a stockholder of the National Express and Transportation Company, suing on behalf of himself and all stockholders of that corporation who should come in and contribute to the expenses of the suit, brought an action in equity in the circuit court of the United States for the Eastern District of Virginia, against that corporation—to be hereafter, in this opinion, designated as the Express Company—

and against its president, directors, and superintendent. The bill set forth that the company had been and was then being conducted in a reckless, extravagant, and improvident manner, and that the money subscribed by the plaintiff and other stockholders had been and was being wasted and misapplied in conducting its business, chiefly in ways and for purposes that were illegal and in fraud of the rights of stockholders. The relief sought was an injunction restraining and prohibiting the company from conducting its business in the illegal and improvident manner specified in the bill. The bill also, prayed that a receiver be appointed by the court to take possession of the property and effects, books of account, and papers of the company; that such property and effects might be sold and disposed of, and any money due the company collected by the receiver; and that an account be taken under the order of the court of its business, its debts and liabilities paid, and the balance distributed among the stockholders. The bill particularly referred to an agreement with one Ficklin which, it was alleged, ought to be set aside as in fraud of the rights of stockholders. The defendants were duly served with process, and one of them, J. J. Kelly, the superintendent of the Express Company, filed an answer. The company appeared and adopted as its own the answer of Kelly.

On the 23d of August, 1866, an order of injunction was issued restraining the defendants "from collecting or taking any proceedings to collect or enforce from the complainant the payment of moneys for or on account of his stock in said company or assignments or calls thereon, either by sales of stock or otherwise, and from making any assessments upon the complainant in respect to or on account of his said stock, and also enjoining and restraining the said company, its directors, agents, and servants, from pleading, using, or applying the property, funds, effects and credits of the said company to or for any purposes or objects other than the regular and legitimate express and transportation business for which the said company was organized, and from carrying out or fulfilling the agreement with Benjamin Ficklin, mentioned in said bill, or any similar agreement with any other person, and from selling any of the shares of said stock held or owned by the complainant until the further order of this court."

The Express Company, on the 20th day of September, 1866—having previously appeared and filed its answer in the Reynolds suit—executed

to John Blair Hoge, J. J. Kelly, and C. Oliver O'Donnell, a deed assigning and conveying to them all the estate, property, rights, and credits of the company, of every kind and wherever they might be, including moneys payable to the company, "whether on calls or assessments on the stock of the company," or on notes, bills, accounts, or otherwise. The deed was made on certain trusts, among others, that the trustees should permit the Express Company to remain in the possession and use of all the property conveyed or assigned, except debts, claims, and moneys payable, until November 1 1866, and thereafter, until the trustees should be requested by one or more of the creditors secured by the deed, and whose debt or debts should then be due, to take possession of the assigned property; the trustees, however, to take possession at any time, if requested by the company's board of directors. The trustees were required by the deed to proceed without unnecessary delay "to collect all the debts, claims, and moneys payable, which are hereby granted or assigned."

On the 31st of December, 1866, the court appointed a receiver of the money, property, and effects of the Express Company, "with all the powers, rights, and obligations usual in such cases, subject to the control of this court, until the affairs of said company be fully and finally closed up." He was ordered to execute and file, before entering upon his duties, a bond with sureties to be approved by the court, of \$20,000, conditioned for the faithful discharge of his duties as receiver of the funds, property and effects of the Express Company. It was further provided in the order appointing the receiver as follows:

"That upon the execution, approval, and filing of said bond the said receiver shall be vested with all the estate, real and personal, as well as all the money, notes, accounts, assessments due on stock or other securities, or rights in action of the said National Express and Transportation Company, as trustee of such estate and property, for the use and benefit of the creditors of said company and of its stockholders and others who may be interested in the same, with all the powers, rights, and authority of a trustee appointed by this court or acting within its jurisdiction and control.

"Such receiver shall have all the powers and authority which ordinarily belong to such trustee, and the said defendants, as well as all other persons who may have the possession or control of any of the money, books, property, effects, or things in action of the said National Express and Transportation Company, and especially

John Blair Hoge, John J. Kelly, and C. Oliver O'Donnell, the trustees named in a pretended assignment referred to in the complainant's petition, are hereby required to assign, transfer, and deliver to the said trustee, on being notified of this order, all such money, property, notes, bonds, estate, real and personal, so in their hands or under their control, and they are also required to execute and deliver all deeds, conveyances, releases, transfers, or acquittances that may in anywise be necessary to place any or all of said property or effects so in the hands or under the control of the said receiver, and they and each of them, on being required, shall make all discovery and furnish all information which the said receiver may require in relation to any or all of the property, business, or transactions of the said company.

"The said receiver will proceed to collect all the property, money, and effects of the said National Express and Transportation Company and covert the same into money, and he will also ascertain the amount of the debts and liabilities of the said National Express and Transportation Company, and, after payment therefrom of all expenses, including counsel fees and costs, with such compensation as the court may allow him, will, from time to time, apply the funds so received and obtained by him in the satisfaction and discharge of the debts of the said company under the orders of this court.

"And if there shall be any sums due upon the shares of the capital stock of the said company the said receiver will proceed to collect and recover the same, unless the persons from whom the said sums may be due shall be wholly insolvent, and for this purpose may prosecute actions at law or in equity for the recovery of such sums in his own name as receiver or otherwise as he may deem best, and shall apply the money so received under the order of this court to the satisfaction and payment of the remaining debts of said company as well as the legal and necessary expenses of the due execution of this trust, including a reasonable compensation and commission to himself for services on this behalf and also including such necessary and reasonable fees and costs as may be necessary in maintaining, prosecuting, or defending any suit or suits which it may be necessary to prosecute or defend in order to the full execution of this trust."

The receiver gave the required bond, and it was approved by the court on the 12th of January, 1867.

Reynolds having died, Washington Kelley, a

stockholder, was permitted to become a party plaintiff, and, with the leave of the court, filed August 20th, 1870, an amended and supplemental bill. The receiver reported to the court, December 11th, 1880, that he had not been able to obtain possession of any of the company's effects, except two freight cars, and that so far as he could ascertain, in all the States where the company did business, its property and effects had been attached by its creditors. This report being made, "on motion of the defendants John Blair Hoge and J. J. Kelly," the order appointing the receiver was vacated, annulled, and set aside, the receiver discharged and exonerated, the injunction dissolved, and the suit dismissed.

On the 4th of December, 1871, W. W. Glenn, suing on behalf of himself and all other creditors of the Express Company, filed his bill in equity in the chancery court of the city of Richmond against that corporation, and its officers, and against the trustees named in its deed of September 20th, 1866. The object of that suit was to collect the assets of the company, including the amounts due from the subscribers of its stock. The proceedings in that cause are fully set out in *Hawkins v. Glenn*, 131 U. S., 319. It is only necessary now to state that in the progress of that suit an order was entered December 14, 1880, sustaining the validity of the deed of assignment of September 20, 1866, removing the surviving trustees named in it, with their consent, and substituting in their place John Glenn, who was clothed by that order, "with all the rights and powers, and charged with all the duties of executing the trusts of said deed to the same effect as were the original trustees therein;" Glenn, however, not to take possession of the property covered by the deed, until he gave bond with security for the faithful discharge of his duties as substituted trustee. He gave such bond January 3, 1881, and it was approved by the court.

By the same order a call and assessment of 30 per cent. of the par value of each share of stock was made upon stockholders, who were required to make payment to John Glenn, substituted trustee. By a decree entered July 21, 1883, it was adjudged "that John Glenn, trustee, on the payment to him, within six months from the date of this decree, by any of the subscribers to the stock of the defendant company, or by any other person claimed to be liable on account of said stock, of 25 per centum of the original amount of said subscription, with interest thereon at the rate of 6 per centum per annum, from thirty days from the date of this decree, with any costs incurred heretofore or

by said trustee in any suit brought by him heretofore, or which may hereafter be brought before tender of said 25 per cent. under this decree, to recover of such stockholder or other party, the amount for which he may be responsible on said stock under the decree in this cause, shall execute a receipt therefor to operate as a full acquittance and discharge of all persons on account of such subscription, both of the original subscribers thereto, and of any assignee thereof." By another order, made March 26, 1886, in the circuit court of Henrico County, Virginia—to which the cause was removed in 1884—an additional call and assessment of 50 per cent. of the par value of each share of stock was made upon stockholders, who were severally required to pay the said amounts hereby called for and assessed to John Glenn, he being "authorized and directed to collect and receive said call and assessment, and to take such prompt steps to that end, by suit or otherwise, and in such jurisdictions as he may be advised."

Marbury, it is admitted, was an original subscriber for 100 shares of the company's stock, for which he received a certificate, paying 20 per cent., only, on his subscription. The object of the present suit is to recover from him the sum of \$5,000, by reason of the above call and assessment of 50 per cent. with interest at the rate of 6 per cent. per annum from March 26, 1886, the date of the order making such call and assessment. He pleaded that he never was indebted, and did not promise as alleged; that the plaintiff's cause of action did not accrue within three years before the commencement of this suit; that the chancery court of the city of Richmond had no jurisdiction to render the decree of December 14, 1880; and that the plaintiff, as trustee, had no right to sue in the court below in his own name or otherwise.

At the trial below the court refused to instruct the jury, at the plaintiff's instance, that this action, having been brought within three years after the decree, in the circuit court of Henrico County, Va., of March 26, 1886, the plea of limitation constituted no defence. It, also, refused to instruct the jury, at the instance of the plaintiff, that the decree of July 21, 1883, in the Virginia court constituted no defence, and did not relieve the defendant from liability for the assessment made by the order in that court of March 26, 1886. And, upon the motion of the defendant, the jury were directed to find, and in accordance with that direction returned a verdict, for the defendant, on which judgment was entered.

Upon appeal to the General Term the judg-

ment was affirmed upon the authority of *Glenn v. Busey*, 5 Mackey, 233, where it was held, in a case similar to the present one, that Glenn could not maintain an action in the court below in his own name as trustee.

Since the decision in *Hawkins v. Glenn*, 131, U. S., 319, and *Glenn v. Liggett*, 135 U. S. 533, the only questions open for consideration in the present case relate to limitation and to the right of the plaintiff to bring this action in his own name as trustee.

It is not disputed that the time prescribed by the statutes in force in the District of Columbia for the bringing of suits like the present one is three years from the accruing of the cause of action. The defendant contends that liability upon his subscription of stock could have been enforced by the receiver appointed by the circuit court of the United States for the Eastern District of Virginia in the Reynolds suit, at any time after the 12th of January, 1867, on which day the receiver's bond was filed and approved by the court, and that, as more than three years elapsed, after that date, and while the Reynolds case was pending, without suit being brought against him, he is protected by the statute of limitation. We are of opinion that this position cannot be sustained. The order of December 31, 1866, in the Reynold's suit was not, in any proper sense, a call or assessment on the company's stock. Nor was it equivalent to one. The deed of September 20, 1866, assigned and transferred to Blair, Kelly, and O'Donnell, trustees, among other property, all moneys payable "on calls or assessments on the stock of the company," and the order of December 31, 1866, in the Reynold's suit vested in the receiver, as trustee, "assessments on stock," and directed him to proceed in the collection and recovery of "any sums due upon the shares of the capital stock of the said company." But nothing was due from subscribers of stock until a formal call or assessment was made by the company, and no call or assessment could be made by the trustees named in the deed of September 20, 1866, or by the receiver in the Reynold's suit. *Glenn v. Macon*, 32 Fed. Rep., 7.

In *Hawkins v. Glenn*, the court said: "By the deed the subscriptions, so far as uncalled for, passed to the trustees, and the creditors were limited to the relief which could be afforded under it, while the stockholders could be subjected only to equality of assessment, and as the trustees could not collect except upon call, and had themselves no power to make one, rendering resort to the president and directors necessary, or, failing their action, then to the

courts, it is very clear that the Statute of Limitations could not commence to run until after the call was made." See also *Scovill v. Thayer*, 105 U. S., 143, 155. If the court, in the Reynolds suit, had intended to make a call for the payment in full of all subscriptions of stock, it would have used language different from that employed in the order appointing the receiver. It is clear that no action could have been maintained by the receiver in the Reynolds suit, in respect to unpaid subscriptions, except to compel the payment of sums due on formal calls or assessments, if any, made by the company prior to the institution of that suit. For these reasons, the defense based upon limitation cannot be sustained. And in conformity with *Hawkins v. Glenn*, and *Glenn v. Liggett*, we hold that limitation commenced to run, in favor of the present defendant, only from the order in the Virginia court making the call or assessment on subscribers of stock. *Glenn v. Williams*, 60 Md., 93, 122, 123.

The other question—as to the right of the plaintiff, in virtue of the authority conferred upon him by the Virginia court, to bring the present action in his own name as trustee—is a more serious one. In *Jackson v. Tiernan*, 5 Pet., 580, 597, Mr. Justice Story, speaking for the court, said that "the general principle of law is, that choses in action are not at law assignable. But, if assigned, and the debtor promises to pay the debt to the assignee, the latter may maintain an action for the amount against the debtor, as money received to his use. Independently of such promise, there is no pretense that an action can be sustained." After referring to some adjudged cases, which he said were distinguishable from the one then before the court, he proceeded: "They are either cases where there was an express promise to hold the money subject to the order of the principal, or there was an implied promise to pay it over as it was received to the use of a particular person. The express promise to pay to order bound the party, and excluded any claim for a lien, and any defense for want of a privity between him and the holder of the order. The receipt of the money for the use of any particular person necessarily implied a promise or obligation to hold it in privity for such person."

In *Pritchard v. Norton*, 106 U. S., 124, 130, Mr. Justice Matthews, delivering judgment, said: "Whether an assignee of a chose in action shall sue in his own name or that of his assignor is a technical question of mere process, and determinable by the law of the forum; but whether

the foreign assignment, on which the plaintiff claims, is valid at all or whether it is valid against the defendant, goes to the merits and must be decided by the law in which the case has its legal seat. Wharton, *Conflict of Laws*, Secs. 735, 736." And in New York, &c. Co. v. Memphis Water Co., 107 U. S., 205, 214, the court, speaking by Mr. Justice Bradley, said: "We have lately decided, after full consideration of the authorities, that an assignee of a chose in action, in which a complete and adequate remedy exists at law, cannot, merely because his interest is an equitable one, bring a suit in equity for the recovery of the demand. *Hayward v. Andrews*, 106 U. S., 672. He must bring an action at law in the name of the assignor to his own use. This is true of all legal demands standing in the name of a trustee, and held for the benefit of *cestuis que trust*. Besides the authorities cited in that case, reference may be made to *Mitford on Pleading*, 123, 125; *Willis's Equity Plead.*, 435, note *g*; *Adair v. Winchester*, 7 *Gill & Johns.*, 114; *Mosely v. Boush*, 4 *Rand.*, 392; *Doggett v. Hart*, 5 *Fla.*, 215; *Smiley v. Bell, Mart. & Y.*, 378; and the English and American notes to *Ryall v. Rowles*, 1 *Ves. Sen.*, 348, and to 2 *White & Tudor's Leading Cases in Equity*, pages 1567, 1670 (ed. 1877)."

The right which the Express Company acquired by the defendant's subscription to its capital stock was only a chose in action. It passed by the deed of September 20, 1866, to the trustees, Blair, Kelly and O'Donnell, but subject to the condition that a chose in action is not assignable so as to authorize the assignee to sue at law, in his own name, unless the right to do so is given by a statute, or by settled law, in the jurisdiction where suit is brought. This is the well established rule of the common law, and the common law touching this subject governs in the District of Columbia. If the trustees named in the deed of 1866 had sued in this District for sums due upon calls or assessments on stock, they must have sued in the name of the Express Company for their use, unless the stockholders expressly promised to pay them, or unless such a promise could be implied as matter of law. There was no such express promise by Marbury, although he concurred in the assignment made by the company to those trustees.

But it is said that stockholders must be presumed to assent to every lawful disposition made of its property by the corporation. When this point was made in *Glenn v. Busey*, 5 M., 243, it was fully met by Mr. Justice Cox, speaking for the court. After observing that a stockholder in a corporation holds a double relation to it; that, in his capacity as debtor, he has not promised to pay to the company's order or to its assignee, but to the company only; and that as stockholder he would not be held to have given more than the general authority to the corporation to deal with its property, he said: "If we go further than this, we must hold that the mere fact of being a stockholder in a corporation makes his indebtedness a negotiable one, even against the terms of his agreement with the company and the intention of the parties. Thus, if a stockholder borrowed money from the company on his sealed bond, the agreement would be that as his bond is a part of the assets

of the company, and he has generally and impliedly assented to the assignment or negotiation of its property, as it may think best, ergo, his bond may be negotiated like a promissory note. But this reasoning would not stop at corporations. It would apply equally to partnerships. Each member of a partnership is the agent of all, and all the others are the agents of each, and all or each would have authority to settle debts by the assignment of property of the firm. If, then, one becomes indebted to the firm on an open account, the firm, on the principles before mentioned, could assign or negotiate the debt, and so give the assignee a right of action in his own name. In such action the plaintiff, after stating the original indebtedness and its assignment, which would make a demurrable case, would only have to supplement it by an averment that the debtor was a member of the firm who made the assignment, and his case would be complete. It is hardly necessary to say that this would be a novelty in the law of contracts, and actions and pleadings, for which not a semblance of authority could be found."

Is the question as to the right of the trustee, Glenn, to bring this suit, in his name, any different by reason of the fact that the Virginia court made the call or assessment in question, substituted the plaintiff as trustee in the place of Blair, Kelly, and O'Donnell, removed, and both authorized and directed him to collect and receive such call or assessment, taking steps to that end by suit or otherwise, and in such jurisdiction as he might be advised? We think not. Undoubtedly the Express Company, having refused or neglected to make the necessary call or assessment, a court of equity could itself make it, if the interest of creditors required that to be done. In other words, as said in *Scovill v. Thayer*, 105 U. S., 143, 145, and repeated in *Hawkins v. Glenn*, 131 U. S., 335, "the court will do what it is the duty of the company to do." See, also, *Glenn v. Williams*, 60 Md., 93, 113, 114. But the making of the call or assessment by the court, for the company, does not, in the absence of some statutory provision on the subject, change the rule that a demand upon the stockholder to meet a call or assessment, by competent authority, must be enforced in the name of the person or corporation holding the legal title to the stock subscription, and to whom the promise of the stockholder was made. There is no reason why the trustee, Glenn, could not have sued in the name of the company. For, as said in *Hawkins v. Glenn*, concurring with the Supreme Court of Appeals of Virginia in *Hambleton v. Glenn*, 85 Va., 901, 905, "as this corporation, notwithstanding it may have ceased the prosecution of the objects for which it was organized, could still proceed in the collection of debts, the enforcement of liabilities, and the application of its assets to the payment of its creditors, all corporate powers essential to those ends remained unimpaired."

We concur entirely in the views expressed by Mr. Justice Cox, speaking for the court, in *Glenn v. Busey*, where will be found a careful and elaborate discussion of this question. In harmony with the decision in that case, we hold that the present suit cannot, consistently with

the principles of the common law—which is the law, upon this question, for the District of Columbia—be maintained by the plaintiff in his own name, as trustee. We are aware that a different rule obtains in some jurisdictions where the common law has been modified by statute or by a settled course of decisions, but we are unable to hold that the law of this District is otherwise than has been indicated in this opinion.

Judgment affirmed.

THE COURTS.

Supreme Court of the District of Columbia.

AT LAW—New Suits.

May 18, 1892.

32946. Robertson & Kaufman v. Samuel Barnhardt. Account, \$159.93. Pliffs. atty., J. W. Nichol.

32947. Woodward & Lothrop v. W. E. Prall. Note and account, \$749.85. Pliffs. attys., Riddle & Davis.

May 19.

32948. J. N. Wood, Infant, by his next friend, Marie L. Le Baron, v. Daniel Ballauf. Replevin. Pliffs. attys., Whitaker & Prevost. Defts. atty., Alex. Porter Morse.

May 20.

32949. Jeanie L. Beach v. Ratcliff, Darr & Co. Replevin. Pliffs. attys., Cook & Sutherland.

May 21.

32950. N. H. Shea v. Jno. Lally et al. Account, \$392.41. Pliffs. atty., M. J. Colbert.

May 23.

32951. J. M. Frank v. H. Ross. Replevin. Pliffs. attys., Lipscomb & Woodward.

32952. Mary M. McElhone v. The Mass. Beneficial Ass'n. Policy. Pliffs. attys., Jos. K. McCammon and Jas. H. Hayden.

32953. C. Blanchette v. J. S. Moss.

May 24.

32954. The U. S., ex rel. Sam. C. Reid, adm'r of Henry Coit's estate, v. Jas. G. Blaine, Secretary of State of the United States of America. Mandamus. Pliffs. attys., McDonald, Bright & Fay.

32955. G. G. Boteler v. The District of Columbia. Certiorari. Pliffs. attys., T. A. Lambert.

32956. A. P. Fardon v. The District of Columbia. Certiorari. Pliffs. atty., T. A. Lambert.

32957. Geo. K. French v. D. M. Ransdell. Replevin. Pliffs. atty., T. M. Fields.

32958. J. P. Printz v. F. H. Saunders. Note and account, \$58.85. Pliffs. atty., W. Myer Lewin.

32959. Geo. Mackell v. A. W. Giddings. Ejectment. Pliffs. atty., E. M. Hewlett.

32960. Max Gould v. Myer Loeb. Damages, \$5,000. Pliffs. atty., A. C. McNulty.

May 24.

32961. International Book Co. v. J. D. Free, jr. Account, \$358.76. Pliffs. attys., H. W. Garnett and D. S. Mackall.

32962. Cyrus Brewster v. Samuel H. King. Note and account, \$321.95. Pliffs. atty., H. W. Garnett; Defts. atty., L. Tobriner.

32963. Loughead & Co. v. E. F. Woodbury. Note and account, \$625.74. Pliffs. attys., J. A. Barthel and A. H. Bell.

May 25.

32964. Armstrong & Co. v. H. Posternack. Replevin. Pliffs. atty., C. A. Brandenburg. Defts. atty., L. Tobriner.

32965. Hagerstown Furniture Co. v. H. Posternack. Replevin. Pliffs. atty., C. A. Brandenburg. Defts. atty., L. Tobriner.

May 26.

32966. Caroline Voigt v. The B. & O. RR. Co. Damages, \$10,000. Pliffs. attys., W. A. Cook and J. A. Maedel.

32967. Allison Sailor, jr., v. The D. C. and the Treasurer of the U. S. Certiorari. Pliffs. atty., T. A. Lambert.

32968. Jno. H. Walter and W. Mosby Williams v. T. G. Buddington. Ejectment. Pliffs. attys., W. Mosby Williams and Jno. Ridout.

32969. Jno. H. Walter et al. v. T. G. Buddington. Ejectment. Pliffs. attys. W. Mosby Williams and Jno. Ridout.

32970. Jno. H. Walter et al v. Mary F. Wilcox et vir. Ejectment. Pliffs. attys., W. Mosby Williams and Jno. Ridout.

32971. D. D. Stone v. P. H. McNamara. Account, \$165. Pliffs. atty., E. L. Schmidt.

32972. J. H. Semil & Co. v. S. H. King. Account, \$314.03. Pliffs. attys., J. B. Larner and W. G. Reed.

32973. Eliza A. Byers v. J. S. McClanahan. Pennsylvania judgment, \$659.38. Pliffs. atty., Neil Dumont.

32974. J. Irving Boswell v. W. E. Cruit. Judgment of Justice Taylor, \$20.

32975. The Second Nat. Bank of Baltimore v. Lewis J. Lewis & B. Blethyn. Note, \$291.91. Pliffs. atty., O. B. Hallam.

32976. R. Schram v. Samuel Barnhardt. Replevin. Pliffs. atty., L. Tobriner.

May 27.

32977. Easterday & Mallory v. L. F. Randolph. Certiorari. Defts. atty., E. L. Schmidt.

32978. Grinberg & Glauber v. S. M. Jacobs. Account, \$291.48. Pliffs. attys., J. A. Barthel and A. H. Bell.

32979. A. W. Griswold v. Chas. Early. Account, \$2,000. Pliffs. attys., Phillips & McKenney.

32980. P. J. McElroy v. Jno. A. Gerrits. Account, \$181.68. Pliffs. atty., H. W. Sohon.

32981. P. H. Heiskell, Jr., & Co. v. J. A. Owens et al. Notes, \$183.32. Pliffs. atty., C. A. Brandenberg.

32982. E. McCormick v. S. Oppenheimer. Certiorari. Defts. atty., L. Tobriner.

32983. J. B. Bellinger, to the use of W. J. Frizzell, v. D. P. Syphax. Judgment of Strider, J. P., \$6,500. Pliffs. atty., W. P. Williamson.

IN EQUITY.—New Suits.

May 24.

13959. Gilbert Moyers v. E. S. Lacey. For injunction. Com. sol., A. H. Jackson. Defts. sols., Enoch Totten and W. A. McKenney.

13960. Fannie E. Nicodemus et al. v. Grace M. Nicodemus et al. To confirm contract of sale of infants real estate. Com. sol., J. H. Gordon.

13961. Geo. W. Webb, alleged lunatic. Upon petition of E. Douglas Webb. Com. sol., E. D. Webb.

May 25.

13962. Mary F. Rowe v. Lewis H. Rowe. For divorce. Com. sol., L. C. Williamson.

13963. C. E. v. A. M. E. For divorce. Com. sols., J. J. Willmarth and W. W. Flemming.

May 26.

13964. W. W. B. Boteler v. Mary S. Callan et al. For specific performance. Com. sol., E. L. Schmidt; Defts. sols., Padgett & Forrest.

13965. Patrick Keighan, alleged lunatic. Upon petition of Josepha Houghton. De lunatico inquirendo. Com. sol., Jno. B. Larner.

13966. Henry Bondit. Alleged lunatic upon petition of Josepha Houghton. De lunatico inquirendo. Com. sol., Jno. B. Larner.

13967. James M. Harbison v. Charlton Heights Improvement Co. To rescind contract of purchase of lots at Charlton Heights. Com. sol., E. L. Gies.

13968. Hannah Steiger et al. v. Mary Sadler et al.

13969. Mamie Edith Hough v. Magruder Hough. For divorce. Com. sol., C. Carrington.

May 27.

13970. Jno. W. Boggs v. Philip N. Dwyer et al. To remove cloud from title. Com. sol., J. J. Darlington.

13971. Maria E. Merrick v. Philip N. Dwyer et al. To remove cloud from title. Com. sol., J. J. Darlington.

Law student writing 100 words per minute in stenography, wishes position in a Lawyer's office.—Address WM. B. CLEARY,

Care of SAMUEL MADDOX,
462 Louisiana Ave.

Legal Notices.

FIRST INSERTION.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Susie G. White } No. 13,263, Equity Doc. 32.

Samuel L. Phillips et al. Sidney T. Thomas and Clarence A. Brandenburg, trustees in this cause, having reported the sale of the real estate described in the bill of complaint, being the west 25 feet of lot No. 6 and the east half of lot No. 7, in square or reservation lettered A, together with the improvements thereon, to Jacob J. Appich, for \$7,375 cash:

It is, by the court, this 22d day of June, 1892, ordered that said sale be ratified and confirmed unless cause to the contrary thereof be shown on or before the 26th day of June, 1892.

Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said 26th day of June, 1892, and also in The Evening Star.

A. B. HAGNER, Asso. Justice.
A true copy. Test: J. R. Young, Clerk,
23 By M. A. Clancy, Asst. Clerk.

[Filed June 2, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 7th day of June, 1892.

Mary C. King, complainant,

vs.

Clement J. Bright, Mary E. Taylor, Edwin Bright, Martha A. King, Jesse Bright, F. Marcellus Cox. No. 13,853, Equity Docket 33.

On motion of the plaintiff, by Mr. Franklin H. Mackey, her solicitor, it is ordered that the defendants, F. Marcellus Cox, Clement J. Bright, Edwin Bright and Jesse Bright, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a construction of the will of Thomas McDonnell.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
23 By L. P. Williams, Asst. Clerk.

[Filed June 7, 1892. J. R. Young, Clerk.]

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, Holding a Special Term for Orphans' Court Business.

This 3d of June, 1892.

In re estate of EDWARD W. REMEY, late of the United States Navy. No. 5,033. Admin. Doc. 18.

Application having been made for letters of administration on the estate of said Edward W. Remey, deceased, by Captain George C. Remey, U. S. N.:

Notice is hereby given to all concerned to appear in this court on Friday, the 1st day of July, 1892, at 1 o'clock p. m., to show cause, if any exist, against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter and Evening Star once a week in each of three successive weeks before said day.

By the Court. A. B. HAGNER, Justice.
23 A true copy. Teste: L. P. WRIGHT, Reg. of Wills, D. C.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of CATHERINE COTTRELL, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23d day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23d day of May, 1892.

WARD THORON,

23 Ward Thoron, Proctor.

1505 Penna. Ave., n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of HENRY R. PYNE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23d day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of May, 1892.

ELIZABETH A. PYNE,

23 612 Eighteenth St., n. w., City.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

Holding a Special Term for Orphans' Court Business.

This 3d of June, 1892.

In re estate of CATHARINE GRAHAM, late of Washington, D. C. No. 5027. Admin. Doc. 18.

Application having been made for the probate of a paper-writing propounded as the last will and testament, and for letters testamentary on the estate of said Catharine Graham, deceased, by Bartholomew Diggins:

Notice is hereby given to all concerned to appear in this court on Friday, July 1st, 1892, at one o'clock p. m., to show cause if any exist against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter and Washington Post once in each of three successive weeks before said day.

By the Court. A. B. HAGNER, Justice.
A true copy. Teste: L. P. WRIGHT, Reg. of Wills, D. C.
23 Gordon & Gordon, Proctors for applicant.

SECOND INSERTION.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of OLIVER W. LONGAN, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under its hand this 28th day of May, 1892.

THE NATIONAL SAFE DEPOSIT, SAVINGS AND TRUST COMPANY of the District of Columbia.

By THOMAS R. JONES,

22 John C. Wilson, Proctor.

3d Vice Pres.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,**

The 26th day of May, 1892.

**Arthur E. Bateman, Jabez A. Bostwick and George H. Sullivan
Administrator of Algernon S. Sullivan, deceased,**

vs.

**Harvey Durand, Thomas W. Pearsall, Stephen V. White, William
W. Dudley and John E. Beall.**

In Equity. No. 13,646. Eq. Docket, 33.

On motion of the plaintiffs, by Mr. H. H. Wells, their solicitor, it is ordered that the defendants, Harvey Durand, Thomas W. Pearsall and Stephen V. White, who are non-residents and against whom subpoenas have been issued and returned not found, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to close up and obtain final settlement of a trust existing between the parties to said suit in respect to certain real property situate in the District of Columbia, known as Scott's Ordinary and Terra Firma, on the Tennessee Road and sometimes known as the Varnell property and more fully described in the bill filed in this cause, and for the further purpose of obtaining a discovery and account from the defendant, Harvey Durand, of the moneys received by him, part of the proceeds of the sale of the said premises that have come into his possession, part of said trust fund, and what disposition was made by him thereof, and especially of the sum of \$23,500, and in what other property the same was invested by him.

This notice shall be published in the Evening Star and the Washington Law Reporter.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
22 By M. A. Clancy, Asst. Clerk.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of HENRY C. McCENEY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 17th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of May 1892.

HENRY E. DAVIS,
Fendall Building,
344 D St., n. w.

22 Henry E. Davis, Proctor.

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of JOHN I. GREGG, late of the District of Columbia, deceased.

All persons having claims against the said deceased, are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 22d day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of April, 1892.

HARRIET C. GREGG,
Cr. JOS. K. McCAMMON,
JAS. H. HAYDEN,
1420 F St., n. w.

22 Jos. K. McCammon and Jas. H. Hayden, Proctors.

This is to Give Notice

That the subscriber of District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of SARAH M. RITTENHOUSE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of May, 1892.

RANDALL HAGNER,
406 5th street, n. w.

22 Randall Hagner, Proctor.

Legal Notices**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,**

Robert F. Allen vs. Augusta Harris, Letitia B. Galvin and Maria L. Williams.

In Equity. No. 13,806.

On motion of the plaintiff, by Mr. W. Preston Williamson, his counsel, it is this 28th day of May, 1892, ordered that the defendant, MARIA L. WILLIAMS, cause her appearance to be entered herein on or before the first rule-day of this court occurring 40 days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for the sale of sub-lot 68, in square 386, in this City and District, and for partition between the heirs of the late Letitia Allen.

This notice is to be published in the Washington Law Reporter and the Washington Post.

A. B. HAGNER, Asso. Justice.

A true copy. Test: J. R. Young, Clerk.

22 By M. A. Clancy, Asst. Clerk.

[Filed May 28, 1892. J. R. Young, Clerk.]

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of PAUL BOLL, late of the District of Columbia, deceased; on the 8th day of January, A. D. 1891.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 11th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of January, 1892.

ANNA MARIA BOLL,

22 Eugene J. B. O'Neill, Proctor. 1213 G St., n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

Charles A. Elliot et al. vs. Clara Ross et al. } Equity, No. 13,730.

David E. McComb, trustee, having reported to the court a sale of sub-lot 30 in Charles W. King's subdivision of lot 5, square No. 684, involved in this suit, to Henry Walter for the sum of \$3,150, and that the said Henry Walter has complied with the terms of sale on his part, it is this 1st day of June, 1892, ordered that the said sale be hereby ratified and confirmed, unless cause to the contrary be shown on or before the 25th day of June, 1892.

Provided a copy of this order be published in the Washington Law Reporter and in the Evening Star once a week for three weeks prior to said date.

A. B. HAGNER, Asso. Justice.

A true copy. Test: J. R. Young, Clerk,

22 By M. A. Clancy, Asst. Clerk.

[Filed June 1, 1892. J. R. Young, Clerk.]

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of CHARLES C. FAIRFIELD, late of Humboldt Co., California, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 31st day of May, 1892.

WASHINGTON LOAN & TRUST CO.,

By B. H. WARNER, Pt.

22 John B. Larner, Proctor.

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of NATHAN BEACH CLARK, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of May, 1892.

HELEN W. CLARK,

Care Carusi & Miller, 486 La. Ave., n. w.

22 Carusi & Miller, Proctors.

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WASHINGTON, D. C., - - - JUNE 23, 1892

Supreme Court of the District of Columbia.

IN GENERAL TERM.

EX PARTE WILLIAM DOUGLASS CROSS.

1. Section 845, R. S. D. C. (taken from Section 6 of the act of July 7, 1838, 5 Stat. 307) makes a distinction between the sentence of death and the order fixing the time for carrying that sentence into execution, and makes them separate.
2. The whole effect of the statute was to declare that, in case of an application for the purpose of obtaining a review on error, the day of execution should not be set so as to cut off the opportunity for review and possible reversal.
3. The Criminal Court has ample power to make an order postponing the day of execution pending the review, and to fix another day.

Decided June 8, 1892.

Chief Justice BINGHAM and Justices JAMES and BRADLEY sitting.

Messrs. C. M. SMITH and Jos. SHILLINGTON for Cross.

Mr. C. O. COLE for the United States.

Mr. Justice JAMES delivered the opinion of the Court.

This is an application for a writ of *habeas corpus*, on the ground that the day set by the Criminal Court for the execution of the prisoner has passed, and that this court had no power to set another day when it postponed the execution.

In Schrub v. Berggren, 143 U. S., 451, and in Holden v. Minnesota, 137 U. S., 495, the Supreme Court held that the time and place of execution of a sentence of death were not parts of the judgment or sentence, unless made so by statute. It is unnecessary to refer to any other authority, but it may be added that a more explanatory statement of that rule was made by Chief Justice Parker in Howard, ex parte, 17 N. H., 548. "The judgment of the court," he said, "consists of the sentence of death. With it is an order designating the time when the sentence is to be carried into execution. The

order is not, strictly speaking, a part of the judgment, although usually entered with it."

It is not denied on the part of the prisoner, that this is the rule at common law, but it is claimed that in this District the time of execution has been made a part of the sentence by statute. We are referred to section 845 of the R. S. D. C., which is in the following words:

"To enable any person convicted by the judgment of the court to apply for a writ of error, in all cases when the judgment shall be death, or confinement in the penitentiary, the court shall, on application of the party accused, postpone the final execution thereof to a reasonable time beyond the next term of the court, not exceeding in any case thirty days after the end of such term." This section was taken from section 6 of the Act of July 7, 1838, 5 Statute at Large, 307, which was passed before the establishment of this court. As the language of the revision is uncertain in reference to the court beyond whose next term the execution was to be postponed, we recur to the original statute, which was in the following words: "Sec. 6. * * * That, to enable a person convicted by the judgment of the said Criminal Court to apply for a writ of error, in all cases when the judgment shall be death, or confinement in the penitentiary, the said criminal court shall, on application of the party accused, postpone the final execution thereof to a reasonable time beyond the next term of said circuit court, not exceeding in any case thirty days after the end of such term of the circuit court."

We understand the contention, on the part of the prisoner, to be that the time fixed by this postponement is to be regarded as a time fixed by statute for the execution, and that the power of the court to set a day for execution is exhausted when such action is had.

Before we consider the effect of this provision on the power of the criminal court to meet the exigencies of a case by setting a new day, it may be remarked that it illustrates perfectly the distinction between the sentence of death and the order fixing the time for carrying that sentence into execution. This very statute makes them separate in the case provided for. The writ of error would be taken, of course, to a judgment. Thus it was contemplated that there should first be a judgment or sentence of death or imprisonment, and then an application by the accused for a subsequent and separate order fixing a time for execution.

The contention that this setting of a postponed day constituted an absolute fixing of the time of execution, and exhausted the power of

the court in the matter of fixing the time, would be maintainable only on the theory that it was the intent of this statute to dispose of the whole subject of the power of the court in reference to setting a time for execution, and that whatever was not included in this statement of power was excluded. The answer to such a contention is that the subject matter dealt with in this provision was not the powers of the court at all; it related simply to a right of the accused in a particular instance; that is, his right to a postponement of the time of executing his sentence in case he should apply for it in order to have a review of alleged error. With the exception of this restriction in the matter of fixing a day for execution, the power of the court was not made the subject of legislation, but was left as it had been at common law. The whole effect of the statute was to declare that, in case of an application, for the purpose of obtaining a review on error, the day of execution should not be set so as to cut off the opportunity for review and possible reversal.

The prisoner's contention that this proceeding exhausts the power to set a day may be tested in this way: If it should happen that a case should not be disposed of on the review before the expiration of the postponed time, the result of this contention would be that execution could not be carried out, even if the sentence should be affirmed; and then that the operation of the processes of the law would defeat the execution of the law. This result would follow if this statute cuts off the power to set a new day when the time first set has elapsed. The unreasonableness of such a result shows that this statute was not intended to cut off the power to set a new day in case it should be necessary.

The question, then, is, what was the power of the court by the common law? On this question we refer again to the opinion already cited. "There may be," said Chief Justice Parker, "a failure to execute the order at the time prescribed, from various causes—providential occurrences, riots, wilful default of the sheriff. Neither of these can operate as a pardon, or give the prisoner a right to be discharged. The sentence still remains in force. If it has been stayed by a reprieve, it is to be executed at the end of the time specified in the reprieve. * * * If from these or any other causes the time prescribed for execution has passed, the court must make a new order, if no other disposition has been made of the case." 17 N. H., 548.

It is not material to consider whether the postponement ordered by this court pending the review amounted to an affirmative appoint-

ment of a day for execution, and whether this court had power to fix a day. It is enough that such a power still exists somewhere. We hold that the Criminal Court has ample power to make such an order. It follows that the convict is not entitled to a discharge.

The application for a writ of habeas corpus is therefore denied.

Supreme Court of California.

PEOPLE

v.

NG SAM CHUNG ET AL.

CRIMINAL LAW—FORMER JEOPARDY.

Defendants have been placed in "jeopardy" where they have been tried for petit larceny, but before the verdict the court believing they have been guilty of a greater offense, which includes the crime charged, dismisses the case, and they cannot be rearrested and tried for the same or a higher offense, involving the same facts.

Decided April 6, 1892.

IN bank. Appeal from Superior Court, city and county of San Francisco. D. J. MURPHY, Judge.

On the trial in the police court of Ng Sam Chung and Woo Sing for the offense of petit larceny the evidence showed that the offense charged was grand larceny, and the court dismissed the case. Thereafter they were charged in the Superior Court and convicted of grand larceny, and appeal. *Reversed.*

ROBERT FERREL and F. E. STRANAHAN, for appellants.

WM. S. BARNES and Atty. Gen. HART for the people.

Mr. Justice GAROUTTE delivered the opinion of the Court:

The defendants were prosecuted in the police court of the city and county of San Francisco, for the offense of petit larceny, in stealing one gold bracelet of the value of \$27, the property of Jeong Koong. A jury trial was waived, and after the evidence was concluded, upon the suggestion of the prosecuting attorney that the property was taken from the person of said Koong, and that therefore the offense was grand larceny, the court ordered the action dismissed. The defendants were thereafter placed upon trial in the Superior Court upon a charge of grand larceny, upon an information alleging the same facts set out in the complaint in the police court, and the further fact that the property was taken from the person of said Jeong Koong. In addition to their plea of not guilty, they pleaded that they had been once in jeopardy, and the determination of that question is the only matter involved upon this appeal.

The solution of the question as to whether a defendant has been placed in jeopardy in many cases is a matter of considerable difficulty, especially in the light of the variance existing in the decisions of the courts upon the subject. Bishop, in his work on criminal law (section 1027) states the general rule to be: "When the indictment is sufficient and the proceedings are regular, before a tribunal having jurisdiction, down to the time when the jeopardy attaches, there can be no second jeopardy allowed in favor of the State on account of any lapse or error at a later stage." In 1 Benn. & A. Lead. Crim. Cas., p. 537, the correct rule for the determination of the question as to the existence of a prior jeopardy for the same offense is thus stated: "A former conviction or acquittal of a minor offense is a bar to a prosecution for the same act, charged as a higher crime whenever the defendant, on trial of the latter, might be legally convicted of the former had there been no other prosecution." The author illustrates by saying: "If therefore, a person has been indicted and convicted of manslaughter, he cannot be again prosecuted for the same homicide, charged as a murder; for though these crimes are not exactly the same, yet, as the person when on trial for murder, might, under the rules of law, have been convicted of manslaughter, if the evidence failed to sustain the more serious offense, it would follow that if he had been already convicted of manslaughter, in a prior indictment for that crime alone, he might on the trial for murder be convicted of the same identical crime and thus be punished twice." The correctness of the converse of the foregoing rule is even more manifest, viz., a conviction or acquittal of a higher offense is a conviction of all lesser offenses necessarily included therein. Bish. Crim. Law, section 1057, fully indorses the principal laid down in the authority just quoted.

The author says: "When the conviction or acquittal is upon an indictment covering no more than one of the smaller crimes included within a larger, will it bar fresh proceedings for the larger? If it will not, then the prosecutor may begin with the smallest and obtain successive convictions, ending with the largest, while if he had begun with the largest, he must there stop—a conclusion repugnant to good sense."

The same principle is declared in Wharton, Crim. Law, Sec. 563. In the case of State v. Wiles, 26 Minn., 381, 4 N. W. Rep., 615, we find the facts and the legal principles similar to those involved in this appeal. The defendant was convicted of a misdemeanor by a justice of the peace, in stealing a hat of the value of four dollars. Subsequently, he was prosecuted for

felony in stealing the hat from a shop. The court held that the first conviction was a bar to the second prosecution; petit larceny being necessarily included in the second offense charged. In this case the defendants are charged with grand larceny in stealing a bracelet of the value of \$27 from the person of one Koong. This offense as necessarily includes petit larceny as the stealing of a hat of the value of four dollars from a shop includes petit larceny, or as the offense of an assault with a deadly weapon includes a simple assault. Aside from the question of jeopardy, there can be no doubt that under the information filed against the defendants in this case, they could have been convicted of petit larceny, if the evidence at the trial had failed to show that the property was taken from the person of said Koong. It follows that, if the defendants were placed in jeopardy by reason of the proceedings in the police court, their trial in the Superior Court was a second jeopardy, and they are entitled to their discharge.

It appears the defendants were tried upon a charge of petit larceny by a court of competent jurisdiction, and upon the conclusion of the evidence the court, believing that another offense had been committed, refused to render a judgment, but dismissed the action of its own motion. If the evidence in the case proved a petit larceny, the court should have found the defendants guilty; if the proof was lacking to establish such offense, it should have found the defendants not guilty. Jeopardy had attached to them long before the court dismissed the action; and it could not deprive them of any benefit to be derived from that jeopardy by refusing to allow the case to go to judgment, even though it was aware that by reason of an error of law committed during the progress of the trial, or by reason of insufficiency of the evidence to support the charge a mistrial would be the necessary result. In this case, if the police court had rendered a judgment of conviction, it would not have been void, but voidable only. Under a voidable judgment of conviction a defendant is not only in jeopardy, but in jail, and such a judgment accomplishes all the purposes contemplated by any judgment until successfully attacked. There is no good reason to be urged that after these proceedings in the police court the defendants could have been again arrested and tried upon the charge of petit larceny upon the same facts. Such a prosecution could have been had unless the previous proceeding caused jeopardy to attach. It is thus apparent that jeopardy did attach; and

under the standard authorities which we have cited, it was a fatal bar to the prosecution in the superior court. The case of *People v. Hunckeler*, 48 Cal., 331, is directly in point upon many of the matters herein discussed. Let the judgment and order be reversed, and the cause remanded, with directions to discharge the defendants and dismiss the proceedings.

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**Supreme Court of the District of Columbia,
IN GENERAL TERM.**

IN RE WILLIAM ROBINSON ET AL.

1. Where a party is charged with not only an assault but with beating and wounding, he is entitled to a trial by jury.
2. That the trial must necessarily be by indictment does not follow, although that was the usual mode of trying such cases, but the grand jury may be dispensed with and an information substituted, as has been done in these cases.
3. It is beyond the power of Congress to enact a law for this District or elsewhere, to punish an assault and battery without providing for a trial by jury.
4. The petitioners, having been tried and convicted by the Police Court without a jury, are discharged.

Habeas Corpus. No. 183. Decided June 8, 1892.

The CHIEF JUSTICE and Justices JAMES and BRADLEY sitting.

Chief Justice BINGHAM delivered the opinion of the Court:

There are altogether eight cases brought here on habeas corpus.

It appears by the petitions presented to us that the relators were respectively charged with the offense of assault and battery by information in the Police Court; that upon a plea of not guilty the judge of that court proceeded, without a jury, to hear the testimony and make a finding as to their guilt. Finding them guilty in each instance, he sentenced each of them to pay a fine and also to a term of imprisonment in the District jail. The information in each of the cases charged the defendants with having made an assault upon a person named in the information and with having beat, wounded and ill treated the person so assaulted; in other words, the usual form of charging an assault and battery in an indictment was adopted in each instance. The question presented to us is whether the crime of assault and battery is one which at the date of the adoption of the Constitution of the United States was classed as a petty offense, and therefore according to the decision of the Supreme Court of the United States in the case of *The United States v. Callan*, not such a crime or offense as under

the provisions of the Constitution relating to trial by jury entitles the party charged to a trial by jury.

We have recently had a number of cases before us of this character—one where the defendant was charged with petty larceny, another where the party was charged with keeping a bawdy house; and in each case we held that the party was entitled to a jury, and therefore the trial and sentence of these parties, respectively, by the Police Court without a jury was unauthorized. At the time these relators were before the Police Court that court had no power to empanel a jury. We have consulted the numerous authorities cited by counsel, relating to the common law practice of England and in this country before the date of the adoption of the Constitution, and we are entirely satisfied that in England up to the date of the passage of the statute known as 9 Geo. 4, which was about 1830, assault and battery was prosecuted by indictment and the defendant tried by jury. We find no instance before that time where a party was charged with assault and battery and tried and finally sentenced by an inferior tribunal without a jury. There was probably before that time a period when assaults without battery or wounding were tried by inferior tribunals without a jury.

As far as we are advised and can ascertain, such was the practice in Maryland up to the date of the cession of this territory to the United States for the District of Columbia. We are therefore of the opinion that, where the party is charged with not only an assault but with beating and wounding, he is entitled to a trial by jury. That it necessarily must be by indictment does not follow, although that was the usual mode of trying such cases in England, but the grand jury may be dispensed with and an information substituted as has been done in these cases. That practice has been held by this court to be proper, and it in no wise interferes with the right given by the Constitution of the United States to a trial by jury. It is beyond the power of Congress to enact a law for this District or elsewhere to punish an assault and battery without providing a trial by jury. The consequence is, that it becomes our duty to discharge these petitioners. It is hoped that when Congress has enacted the amendments that are proposed to the Act of 1891, providing a jury for the Police Court, we may have a settled rule as to the jurisdiction and power of that court over inferior offenses.

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Law Blanks at the Law Reporter, 503 E.

Supreme Court of the United States.

THE SOUTH SPRING HILL GOLD MINING COMPANY, PLAINTIFF IN ERROR,
v.

THE AMADOR MEDEAN GOLD MINING COMPANY.

Since the decision in the Circuit Court, the control of both the corporations, parties to this suit, having come into the hands of the same persons, but a minority of stockholders in the company which is the defendant in error having retained the interest which they had at the time the decision was rendered, this court reversed the judgment, without passing upon the merits, in order to leave such minority free to vindicate in the court below whatever rights they are entitled to.

Decided May 16, 1892.

IN ERROR to the Circuit Court of the United States for the Northern District of California.

Mr. Chief Justice FULLER delivered the opinion of the Court:

This was an action brought by the Amador Medean Gold Mining Company against the South Spring Hill Gold Mining Company in the Circuit Court of the United States for the Northern District of California, where it was tried on an agreed statement of facts, and a judgment rendered in favor of the plaintiff, to review which this writ of error was prosecuted. The opinion of Judge Sawyer, holding the Circuit Court, will be found reported in 36 Fed. Rep., 688.

When the case came on for argument in this court the attorney for plaintiff in error very properly called our attention to the fact that since the decision in the Circuit Court, "the control of both the corporations, parties to this suit, had come into the hands of the same persons, but that there was a minority of stockholders in the Amador Medean Gold Mining Company who retained the interest that they had at the time the decision was rendered;" "that the two corporations were still in existence and organized, and that the present managers and owners of the properties were anxious that the question should be decided, in order that the minority of the stockholders might receive whatever, by the finding of the court, would be due to them." No appearance has been entered for defendant in error, but a copy of the opening and closing briefs, filed on its behalf in the Circuit Court, has been printed and filed here by plaintiff in error. We can not, however, consent to determine a controversy in which the plaintiff in error has become the *dominus litis* on both sides. We assume that this is not an agreed case gotten up by

collusion; but the litigation has ceased to be between adverse parties, and the case therefore falls within the rule applied where the controversy is not a real one. *Woodpaper Company v. Heft*, 8 Wall., 333; *Cleveland v. Chamberlain*, 1 Black, 419; *Lord v. Veazie*, 8 How., 251; *Washington Market Co. v. District of Columbia*, 137 U. S., 72.

If the writ of error be dismissed, the judgment will remain undisturbed, and the plaintiff in error might be cut off from submitting the questions involved to the determination of the appellate tribunal; while if the judgment be reversed the minority of the stockholders of the defendant in error would be deprived of the benefit of an adjudication in its favor. But although the latter might be thereby subjected to the delay and expense of further litigation, they would still be free to vindicate whatever rights they are entitled to.

Without considering or passing upon the merits of the case in any respect, we deem it most consonant to justice to *reverse the judgment and remand the case for further proceedings in conformity to law, and it is so ordered.*

WE have been favored with a print of an American essay by Mr. Clark Bell, of the New York Bar, entitled "Humor of the Bench." Some of his examples are amusing, and here is one of them. A country lad, aged about 23, a son of the plaintiff, was put into the witness box to testify as to a line fence. He gave his evidence in so low a voice that the judge said to him, "Speak so that these gentlemen" (pointing to the jury) "can hear you." "Why," said the witness with a beaming smile, "are these men interested in pap's case?"

HERE is another specimen, though we think we have heard something very much like it before, applied, however, to a judge of the present time. On one occasion, Baron Graham omitted to sentence a prisoner named Jones, who had been duly convicted. The learned judge was about to conclude when the Court official informed his Lordship of the omission. Thereupon, Baron Graham said with great solemnity, "Oh! I am sure I beg Mr. Jones pardon," and then gravely proceeded to sentence the prisoner to transportation for life.

HERE is a tale Mr. Bell gives us of Mr. Justice Day. At a trial before him one of the witnesses deposed that the defendant spoke of the plaintiff as a "dammed thief." The defendant's counsel at once interposed in correction, "A dammed thief of a lawyer, my lord." "That addition," said Mr. Justice Day, in his calm and philosophic way, "renders the saying perfectly innocuous."—*Law Students' Journal, London.*

U. S. Circuit Court, District of Oregon.

A. T. GILBERT ET AL.

v.

NEW ZEALAND INSURANCE COMPANY.

1. **INHABITANT.**—That the term "inhabitant," as used in the first section of the Judiciary Act, includes a foreign corporation engaged in business in the district in which it is sued, according to the laws thereof.
2. **FOREIGN CORPORATION.**—A foreign corporation engaged in business in any State in this Union, who, in pursuance of the laws thereof, appoints an attorney with power to receive service of process in any suit against it, thereby consents in advance to be sued therein.

Opinion filed March 21, 1892.

MR. LEWIS L. MCARTHUR and **MR. TILMON FORD** for the plaintiffs.

MR. JOSEPH SIMON for the defendant.

Mr. Justice DEADY delivered the opinion of the court:

This action is brought by the plaintiffs, citizens of Oregon, against the defendant, a corporation organized under the laws of New Zealand, and alleged to be an "inhabitant" of the State of Oregon, to recover an alleged loss by fire of \$2,500, against which it had insured the plaintiffs.

The first complaint merely stated that the defendant was a New Zealand corporation and plaintiffs were citizens of Oregon; and on this it was contended that the parties were "citizens of different States," within the meaning of those words in section 1 of the Judiciary Act (Sup. R. S., 612), and therefore the court had jurisdiction.

On demurrer to the complaint, the court held these words did not include an alien subject or corporation, but were confined to citizens of the "States" of this Union.

The plaintiffs had leave to amend, and now alleges that the defendant in 1888 engaged in the fire insurance business in Oregon, and pursuant to the laws thereof concerning foreign insurance companies, deposited with the treasurer thereof the sum of \$50,000, and filed with the insurance commissioner its power of attorney whereby it duly authorized a proper person to accept service of process in any proceeding in any court of the United States therein, and thereupon received a license from said State to engage in such business, and established and has ever since maintained a place of business therein, and is now an inhabitant thereof, doing business therein as a fire insurance company, according to the laws of Oregon.

A demurrer was interposed to the amended complaint, on the ground that the defendant being a foreign corporation is not an "inhabit-

ant" of this State and cannot be sued therein without its consent.

On the argument, counsel for the demurrer cited *Hohorst v. Hamburg Amer. Packet Co.*, 38 Fed. Rep., 273; *Booth v. St. Louis F. E. Man. Co.*, 40 Fed. Rep., 1; *Purell v. British L. & M. Co.*, 42 Fed. Rep., 465; while counsel for the plaintiffs cited *Zambrino v. Galveston, etc., Ry. Co.*, 30 Fed. Rep., 449; *Riddle v. New York, etc., Co.*, 39 Fed. Rep., 290; *Miller v. Eastern Oregon G. M. Co.*, 45 Fed. Rep., 347.

The last case was decided in this court, in which I held, in the language of the syllabus: "A foreign corporation may be an 'inhabitant' of a district or county other than that of which it is a citizen or subject, or where it was organized, within the meaning and purpose of the term, as used in section 1 of the Judiciary Act."

At that time I had before me and considered the first three of the above cited cases, which hold otherwise, but was not persuaded by them.

Since then I have not seen nor heard anything to change my opinion, but much to strengthen and confirm it, in an opinion delivered by Mr. Justice Harlan, in the case of the *United States v. the Southern Pacific Railway Co.*, The Chicago Legal News, Feb., 27, 1892.

The case arose in the N. D. of California, and was heard under section 617 of the Revised Statutes. In the course of his opinion Mr. Justice Harlan said that no "case in the Supreme Court of the United States directly decides that a corporation may not, in addition to its primary legal habitation or home in the State of its creation, acquire a habitation in or become an inhabitant of another State, for purpose of business, and of jurisdiction *in personam*;" and holds that the defendant, a corporation created under the laws of Kentucky but doing business in California, pursuant to the laws thereof, is, for the time being, an "inhabitant" of said State, within the meaning and purpose of the clause of section 1 of the Judiciary Act, which provides that "no civil suit shall be brought before either of said courts (circuit) against any person by any original process or proceeding in any other district than that whereof he is an inhabitant."

In *Bank v. Deveaux*, 5 Cr., 88, it is stated by Mr. Chief Justice Marshall, that the word "inhabitant," in the statute of Henry VIII, concerning bridges and highways, which provides that the same shall be made and repaired by the "inhabitants of the city, shire or riding," was held to include a corporation that had lands within said city, shire or riding, although it might reside elsewhere.

The defendant is an inhabitant of this District within the meaning of the statute.

But this action will lie in this court on the ground of the consent of the defendant.

Section 1 of the Judiciary Act gives this court jurisdiction of such actions as this generally, in which there is a controversy between citizens of a State and foreign citizens or subjects; and the cause concerning inhabitants only restricts the right of the plaintiff to sue the defendant in the district of which the latter is an inhabitant.

But the defendant may waive this privilege and consent to be sued in a district of which he is not an inhabitant. *Ex parte Schollenberg*, 96 U. S., 377; St. Louis, etc., Railway v. McBride, 41 U. S., 180.

A foreign corporation, such as this defendant is, before doing business in this State, is required by the laws thereof to execute a power of attorney and file a copy of the same with the insurance commission and cause it to be recorded in the clerk's office of each county where it has a resident agent, appoint some citizen of the State its attorney, thereby empowering him to accept service of all writs and process necessary to give complete jurisdiction of such corporation to any of the courts of this State or of the United States courts therein, and shall constitute such attorney the authorized agent of such corporation, upon whom lawful and valid service may be made of all writs and process in any action, suit or proceeding, commenced by or against such corporation in any of the courts mentioned in this section, and necessary to give such court complete jurisdiction thereof." Comp. 1887, Secs. 3276, 3277, 3573.

And now it appears by the return of the marshal on the summons in this case that he served the same on the duly authorized attorney of the defendant, as appears by the power of attorney recorded in this county.

This is all that is necessary to give this court complete jurisdiction of the defendant in this action; and to this it consented in advance, when it executed, filed and recorded this power of attorney. In effect it said to every one with whom it did business, although I am an alien and not liable to be sued in this district without my consent, I hereby consent to be served with process therein, so as to give any court in which I may be sued complete jurisdiction of the action.

The case falls within the ruling in *Railway Company v. Harris*, 12 Wall., 81, in which Mr. Justice Swayne, speaking of corporation, said: "It cannot migrate, but it may exercise its authority in a foreign territory upon such condi-

tions as may be prescribed by the law of the place. One of these conditions may be that it shall consent to be sued there."

Of course, I must not be understood to say that a corporation can, by its consent, give this court jurisdiction of a controversy which Congress has not, as where the matter in dispute does not exceed the value of \$2,000.

The demurrer is overruled on two grounds: 1, the defendant, under the circumstances, is an inhabitant of the District; and 2, if this be otherwise, it has consented to be sued herein.

Supreme Court of the United States.

THE CITY OF CLAY CENTER, KANSAS,
APPELLANT,

v.

THE FARMERS' LOAN AND TRUST COMPANY.

The appeal is dismissed for want of jurisdiction, it appearing that the matter in dispute is only \$4,042.65.

Decided May 2, 1892.

APPEAL from the Circuit Court of the United States for the District of Kansas.

Mr. Chief Justice FULLER delivered the opinion of the court:

This was a suit to recover of the city of Clay Center two installments of hydrant rental for eighteen hundred and fifty dollars each, with interest. These rentals were claimed to be due under an alleged contract in respect of the erection of water works, between the city and one Bonebrake and a Waterworks company, his assignee and successor, and to be payable under said contract to the Farmers' Loan and Trust Company, trustee in a trust deed to secure bonds issued by the Waterworks Company for the purpose of borrowing money to complete the construction of the works.

The bill prayed that the city be decreed to have contracted with the Trust Company to pay directly to it so much of the hydrant rental as might be necessary to pay the interest on the bonds and to pay the two installments then due with interest. The decree sustained the contract and the liability to pay the Trust Company directly and awarded recovery to the amount of \$4,042.65. This was all that could be recovered in this suit, if the contract were valid and binding as found. If the Circuit Court had arrived at the contrary conclusion on that point, this was all that in this suit complainant could have lost; and as in the latter contingency complainant could not have brought the case here, so defendant cannot, because the decree, which allowed

all that was claimed, is for less than the jurisdictional amount. The value of the matter in dispute was the accrued rental and interest, and although the determination that such rental was due and should be paid to the trustee involved the existence and validity of the contract, yet causes of action for hydrant rental which had not accrued but might subsequently accrue cannot be availed of to make out jurisdiction of the case by this court upon appeal. New England Mortgage Security Co. v. Gay, *ante*.

The appeal is dismissed for want of jurisdiction.

Supreme Court of Canada.

BELL TELEPHONE COMPANY

v.

CITY OF QUEBEC.

QUEBEC GAS COMPANY

v.

CITY OF QUEBEC.

Appeal—Action to set aside municipal by-law—Supreme and Exchequer Courts Act, Sec. 24 (g).

IRVINE, Q. C., and A. FERGUSON, Q. C., for the appellants.

P. PELLETTER, Q. C., for the respondents.

In virtue of a by-law passed at a meeting of the council of the corporation of the city of Quebec, in the absence of the mayor, but presided over by a councillor elected to the chair in the absence of the mayor, an annual tax of \$800 was imposed on the Bell Telephone Company of Canada, the appellants, and a tax of \$1,000 on the Quebec Gas Company. In actions instituted by the appellants for the purpose of annulling the by-law, the Court of Queen's Bench for Lower Canada (appeal side) reversed the judgment of the Superior Court and dismissed the actions, holding the tax valid.

On appeal to the Supreme Court of Canada:

Held, that the cases were not appealable, the appellants not having taken out or been refused, after argument, a rule or order quashing the by-law in question, within the terms of Sec. 24 (g) of the Supreme and Exchequer Courts Act, providing for appeals in cases of municipal by-laws.

Varennes v. Vercheres, 19 S. C. R., 365; Sherbrooke v. McManamy, 18 S. C. R., 594, followed.

The appeals were quashed without costs.

—*Canadian Law Times.*

Insanity as a Defense to a Charge of Adultery.

In Yarrow v. Yarrow (1892), 8 Times L. R., 214, Sir Charles Butt has decided a point which has often been mooted and discussed, but never before directly presented for judicial settlement in England. Mordaunt v. Moucrieffe (1874), 43 Law J. Rep. P. & M., 49; L. R. 2 Sc. & Div. App., 374, as our readers are aware, is the *locus classicus* for the doctrine that supervening insanity is no bar to a suit for divorce already commenced. But suppose that insanity existed at the time of the commission of the alleged matrimonial offense, in consequence of which a suit for divorce is raised, how far is such insanity a defense to the charge? This was the question that came before Sir Charles Butt in Yarrow v. Yarrow. His lordship answered it substantially in the following way: Insanity is a defense to a charge of adultery, when—but only when—according to the rules in Macnaghten's Case, 10 Cl. & Fin., 200, it is a defense to a charge of crime. No other answer was possible under the circumstances, if Macnaghten's Case has ever been, and still is, law—a point, by the way, on which competent judges have entertained very different opinions. But with all respect *pour la chose jugée*, and fully admitting that Yarrow v. Yarrow was in all probability rightly decided according to the existing law, we make bold to say that to pronounce a woman who, insanely and without foundation, believing that her husband is endeavoring to poison her, commits a matrimonial offense in order to break the tie which gives him the opportunity of doing so, liable to the penal consequences of adultery, is to walk in the very twilight of pathological knowledge. —*Law Journal, London.*

CARRIERS—Passengers—Alighting.—Where a passenger, because of his being asleep, is carried past his station, and at the next station attempts to alight without notifying the conductor, and neither the conductor nor the other train hands know that he intends to alight, and he is thereby injured, the carrier is not liable. Nicholas v. Chicago & W. M. Rwy. Co., Mich., 51 N. W. Rep., 364.

Same.—Where a passenger on a railroad train fell asleep at night, and was carried past his destination, it was not the duty of the company to carry him to the next station, unless he paid or offered to pay his fare to such station; and if the conductor had no reason to believe that injury would result therefrom, he had a right to put the passenger off. Texas & P. Rwy. Co. v. James, Tex., 18 S. W. Rep., 589.

Circuit Court Southern District of New York.

ELECTRICAL ACCUMULATOR COMPANY
v.
NEW YORK & HARLEM RAILROAD CO.

1. PATENTS FOR INVENTIONS.—Electric Accumulators.—Reissued Letters Patent No. 11,047, granted to the Electrical Accumulator Company, as assignee of Joseph Wilson Swan, December 17, 1889, claiming a perforated plate for secondary batteries, having the perforations extending through the plate, and the active material packed in the perforations only, cover a patentable invention.
2. SAME—UTILITY.—The fact that before the date of this invention, Prof. Eaton had packed active material in perforations extending through the plate, at the same time covering the surfaces thereof, and that Mr. Brush had packed it into grooves in the plate without covering the surfaces, does not show a want of invention in the idea of confining it entirely to perforations extending through the plate, since this apparently slight change avoided the difficulties before encountered, and produced an electrode which has, to a great extent, superseded all others, and has become the electrode of commerce.

Decided April 9, 1892. In Equity.

SUIT by the Electrical Accumulator Company against the New York & Harlem Railroad Company for infringement of a patent. *Decree for complainant.*

FREDERIC H. BETTS for complainant.

THOMAS W. OSBORN for defendant.

District Judge COXE delivered the opinion of the Court:

This is an action for infringement of Reissued Letters Patent No. 11,047, granted to the Electrical Accumulator Company of New York, as assignee of Joseph Wilson Swan, on the 17th of December, 1889, for an improvement in secondary batteries. The invention of the reissue is intended to facilitate the construction of secondary battery plates by preparing them with perforations, cells, or holes extending through the plate, in which holes the active material is packed. The original Patent No. 312,599, dated February 17, 1885, was considered by this court in the case of Accumulator Co. v. Julien Co., 38 Fed. Rep., 117. The original was held invalid, pages 140-142, for the reason that it described and claimed a plate the outer surface of which might be covered by the active material. This construction, in view of the work done by Prof. Eaton, was held to be anticipated. The theory of the reissue is that the valuable feature contributed by Swan consists in confining the active material to the holes, without permitting it to extend beyond them to the surface of the plate. That portion of the original which refers to the coating of the outer surface of the plate has been omitted in the

reissue. In other respects the description is unchanged.

The claim is as follows:

"A perforated or cellular plate for secondary batteries, having the perforations or cells extending through the plate and the active material or material to become active packed in the said perforations or cells only, substantially as described."

This is the claim of the original, except that the word "only" has been added. The patent cannot be criticised as a reissue. The claim instead of being broadened is greatly restricted. The application was filed within a reasonable time after the inventor was informed of the facts which made a narrower claim necessary. The facts bring the case within the provisions of Section 4916 of the Revised Statutes.

The field of invention is, concededly, a narrow one.

The counsel for the defendant correctly states that Swan's improvement consists "wholly in the idea of putting on the surface of a perforated plate for secondary batteries no active material beyond the contents of the perforation; everything except this is conceded to be old." The date, *de jure*, of Swan's invention is January 18, 1882. Prior to that time Prof. Eaton had filled the perforations, but he had covered both sides of his plate as well. Mr. Brush had rammed or pressed absorptive substance, in the form of dry powder, into grooves or receptacles without covering the surface of the plate. No one had packed active material into holes extending through the plate, confining it entirely to these holes. This combination was original with Swan. Did it involve invention? In approaching this subject it is well to remember, as the court has frequently had occasion to remark before, that we are dealing with a comparatively new and abstruse art, where the most important results are said to follow from changes, apparently, of the most unimportant character. Complete success has not been attained, but if we may credit the statements of those who are entitled to speak *ex cathredra* on the subject, the rapid strides in that direction during the last decade, are due to changes of form and material which, in many other arts, would be insufficient to support invention. The substitution of one material for another in a door knob is the work of the mechanic, the substitution of one material for another in secondary battery electrodes may solve a problem which will revolutionize the motive power of the world.

In holding that there is sufficient invention

disclosed to support the reissue the court is influenced by the following considerations: The Swan electrode is to-day the electrode of commerce. It has largely taken the place of other structures and is almost universally used. The advantage of having the active material composed of small disconnected masses, packed in holes extending through the plate, is unquestioned. The electrolyte is thus permitted to reach and operate upon both sides of these small masses, instead of on one side where the active material is packed in cells or pockets. The expansion and contraction of the electrode when the battery is in use causes the active material, if packed in cells or grooves or spread upon the surface of the plate, to crack, and portions of it to be pushed out of place and to fall away. These defects which produce "buckling," "short circuiting" and other disastrous results are entirely remedied by the Swan construction. If one of the small masses in his plate becomes injured or falls out it does not affect injuriously the other parts of the electrode. As Sir William Thompson puts it: "The perforated plates have also the great advantage of extending the area of electric communication between the continuous metallic conductor and the porous or spongy material and so minimizing the electric resistance. The application of the oxide in the form of numerous mutually detached parts, separately held by the perforations, has also a great advantage in almost annulling the warping or fracturing effects of the expansion and contraction produced by the changes of oxidation to which the active material is exposed in the charging and discharging of the battery." It is true that the step from the structures of Eaton and Brush to the electrode of Swan seems to be very short when looking back upon the work of these men. But standing where Brush and Eaton did and looking farward to the ideal electrode which should avoid the then existing difficulties and possess the excellencies of the present Swan structure, the steps undoubtedly seemed many and long. If it had occurred to Eaton to scrape off the active material from his plate leaving the holes full, he would have hit upon the invention. But it never did. If Brush had thought of punching out the bottom of his receptacles and had then rammed them full of active material without covering the external plate he would be entitled to the credit of having made the successful structure. But he did not think of it. The experiments at that time seemed to be proceeding along different lines, the object being to keep as much material as possible upon the

surface of the plate. The conviction cannot be avoided that the idea which has made these plates a commercial success was first given to the world in a practical embodiment by Mr. Swan.

Confirmation of these views is found in two recent decisions of the Supreme Court. In Washburn & Moen Manufacturing Company v. Beat 'Em All Barbed Wire Company, 12 Sup. Ct. Rep., 443, the Court says:

"The difference between the Kelly fence and the Glidden fence is not a radical one, but slight as it may seem to be, it was apparently this which made the barbed wire fence a practical and commercial success. The inventions of Hunt and Smith appear to be scarcely more than tentative, and never to have gone into general use. The sales of the Kelly patent never seem to have exceeded 3,000 tons per annum, while plaintiff's manufacture and sale of the Glidden device (substituting a sharp barb for a blunt one) rose rapidly from 50 tons in 1874 to 44,000 tons, in 1886, while those of its licensees in 1887 reached the enormous amount of 173,000 tons. * * * Under such circumstances courts have not been reluctant to sustain a patent to the man who has taken the final step which has turned a failure into a success. In the law of patents it is the last step that wins. It may be strange that, considering the important results obtained by Kelly in his patent, it did not occur to him to substitute a coiled wire in place of the diamond-shaped prong, but evidently it did not; and to the man to whom it did ought not to be denied the quality of an inventor."

In Magowan v. Belting, etc., Company, 141 U. S., 332, 12 Sup. Ct. Rep., 71, it was held that the fact that the patented improvement "went at once into such an extensive public use as almost to supersede all packings made under other methods, * * * was pregnant evidence of its novelty, value and usefulness." These quotations seem peculiarly applicable to the present controversy. The principles which are there so clearly and pointedly reaffirmed require a decision sustaining the validity of the complainant's patent. As to defendant's infringement there can be no doubt. The question arising upon the expiration of the Danish patent has not been argued. The casual examination which the court, in the absence of explanation, has been able to give to this patent leads to the conclusion that it is not for the same invention as the Swan reissue.

There should be a decree for the complainant.

New York City Court—General Term.

JULIUS E. MOSHIEM ET AL.

v.

CHARLES PAWN ET AL.

Decided March, 1892.

Hon. S. M. EHRLICH, C. J.; ROBERT A. VANWYCK and JAMES M. FITZSIMONS, JJ., sitting.

APPEAL from order requiring plaintiffs to furnish bill of particulars.

F. BIEN for appellant; D. McMAHON for respondent.

Chief Justice EHRLICH delivered the opinion of the court:

The authority of the court to order a bill of particulars, and to determine its extent, is not questioned. But the power should be exercised in furtherance of justice, and no person should be required to do that which it is impossible for him to do, under penalty of having his pleading stricken out. *Ammidon v. Century R. Co.*, 39 St. R., 350; 14 Supp., 769.

Some of the things the court below has ordered the plaintiffs to do they swear they cannot do, and their reasons why are given.

The excuse seems satisfactory. The order appealed from should be modified by affirming the order, in so far as it directs the plaintiffs to give to the defendants the specific dates, showing the year, month and day when the payments were made, the separate amounts paid aggregating \$6,340.88, and to furnish an account of the lot numbers, the goods sold, and the amounts realized at the auction sale.

In other respects, the order appealed from will be reversed without costs.

Justices VANWYCK and FITZSIMONS concur.

—N. Y. Law Journal.

QUOTED HIS AUTHORITY.—Daniel Webster, when in full practice, was employed to defend the will of Roger Perkins of Hopkinton. A physician made affidavit that the testator was struck with death when he signed his will. Webster subjected his testimony to a most thorough examination, showing, by quoting medical authorities, that doctors disagree as to the precise moment when a dying man is struck with death—some affirming that it is at the commencement of the disease, others at its climax, and others still affirming that we begin to die as soon as we are born.

"I should like to know," said Mr. Sullivan, the opposing counsel, "what doctor maintains that theory?"

"Dr. Watts," said Mr. Webster, with great gravity—

"The moment we begin to live,
We all begin to die."

—*Omaha Mercury.*

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Legal Notices.

Rule of Court.

RULE 20. * * * * * *Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.*

FIRST INSERTION.

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court Business, letters testamentary on the personal estate of BENJAMIN F. WILKINS, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of June, 1892.

25 ANNA W. WILKINS,
923 23d St. n. w.

H. Baird Stimpson, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
The 21st day of June, 1892.

Minnie A. Haughton
vs. { No. 13,950. Eq. Docket 83.
Reginald Haughton.

On motion of the plaintiff, by Mr. Neill Dumont, her solicitor, it is ordered that the defendant, REGINALD HAUGHTON cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is divorce of plaintiff from the bond of matrimony with the defendant.

Provided that a copy of this order be published once a week for three weeks prior to said day in the Evening Star and in the Washington Law Reporter.

By the Court. A. C. BRADLEY, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
25 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 15th day of June, 1892.

Rebecca Weigmann
vs. { No. 13,364. Equity Docket 82.
John L. Weigmann.

On motion of the plaintiff by Mr. J. J. Johnson, her solicitor, it is ordered that the defendant, JOHN L. WEIGMANN, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce a vinculo matrimonii for desertion and abandonment by the defendant.

Provided said order be published once a week for three weeks prior to said day in the Washington Law Reporter.

By the Court. A. C. BRADLEY, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
25 By M. A. Clancy, Asst. Clerk.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**
The 18th day of June, 1892.

Lizzie Ellsworth } vs. } No. 12,878. Equity Docket 33.
William E. Ellsworth. }

On motion of the plaintiff by W. C. Martin, her solicitor, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to dissolve the marital relations existing between the parties hereto.

The ground for dissolution of said martial relations is willful desertion and abandonment.

By the Court. A. C. BRADLEY, Justice, &c.
True copy. Test: J. R. Young, Clerk,
25 By L. P. Williams, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 20th day of June, 1892.

Joseph F. Courtney, Complainant } vs. } No. 13,467. Eq. Doc. No. 32.
Honora Finn and others, Defendants. }

On motion of the plaintiff by Mr. Eugene F. Arnold, his solicitor, it is ordered that the defendant, JAMES M. COURNEY, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the court will be proceeded with as in case of default.

The object of this suit is the construction of a deed, substitution of a trustee, and an account from the defendant, Honora Finn.

By the Court. A. C. BRADLEY, Justice, &c.
True copy. Test: J. R. Young, Clerk,
25 By M. A. Clancy, Asst. Clerk.
[Filed June 20, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 18th day of June, 1892.

Anna W. Hafner, Complainant, } vs. } No. 13,942. Docket. 33.
Gustav Paul Hafner, Defendant. }

On motion of the plaintiff by Messrs. Sheppard & Laverder, her solicitors, it is ordered that the defendant, GUSTAV PAUL HAFNER cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain an absolute divorce for willful desertion and abandonment for the full and uninterrupted space of two years before filing this bill.

Provided a copy of this order be published in the Washington Law Reporter once a week for each of three successive weeks before said rule-day, and in The Evening Star, also.

By the Court. A. C. BRADLEY, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
25 By L. P. Williams, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Mary Ann Sanford et al., Complainants, } vs. } In Equity. No. 13,633.
Christiania V. N. Callan et al., Defendants. }

On motion of the plaintiffs, by P. E. Dye, their attorney, it is by the court this 23d day of June, 1892, ordered that the defendant, HENRY F. CALLAN, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to have a trustee appointed in place of Nicholas Callan, deceased, who was appointed and substituted by the court, trustee, in place of Notley Young, deceased, (said Young having been appointed trustee under a deed dated February 23, 1828, and found recorded in Liber W. B. No. 20, folio 480, of the land records of the District of Columbia), to make a conveyance of certain land, said Nicholas Callan having made error in the description of certain lands intended to have been conveyed to James E. Morgan by deed dated March 22, 1850, and found recorded in Liber J. A. S. No. 12, folio 221 et seq. land records of the District of Columbia.

The bill asks for the appointment of a trustee to make correction of the error inadvertently made by Callan in a deed.

A. C. BRADLEY, Justice.
A true copy. Test: J. R. Young, Clerk.
25 By M. A. Clancy, Asst. Clerk.
Filed June 23, 1892: J. R. Young, Clerk.

Legal Notices**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**
The 9th day of June, 1892.

E. L. Parker & Co. } vs. } No. 32,902. Law.
John Conway. }

On motion of the plaintiffs, by Mr. Clarence A. Brandenburg, their attorney, it is ordered that the defendant, JOHN CONWAY, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to subject to the satisfaction of plaintiff's claim certain credits of the defendant attached herein.

By the Court: M. V. MONTGOMERY, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
25 By H. W. Hodges, Asst. Clerk.

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of PATRICE de JANON, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 18th day of April, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of April, 1892.

FERDINAND de JANON,
25 1519 K Street.
West Steever, Proctor.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of ANNA L. BOICE, late of the District of the Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 18th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of June 1892.

WASHINGTON LOAN & TRUST CO.,
ANDREW PARKER, Asst. Secy.
25 John B. Larner, Proctor.

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court Business, letters testamentary on the personal estate of BENJAMIN F. WILKINS, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of June, 1892.

ANNA W. WILKINS,
25 923 23d St. n. w.
H. Baird Stimpson, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

June 17th, 1892.

In the case of Orville H. Platt, administrator, c. t. a., of JEDEDIAB H. BAXTER, deceased, the administrator c. t. a. aforesaid has, with the approval of the court, appointed Friday, the 22d day of July, A. D. 1892, at 11 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the administrator c. t. a. will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Washington Post previous to the said day.

Test: L. P. WRIGHT,
25 Register of Wills for the District of Columbia.
J. M. Vale, Proctor.

The Washington Law Reporter.

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WASHINGTON, D. C., - - - JULY 14, 1892

Supreme Court of the District of Columbia,
IN GENERAL TERM.

EVA L. HAAS ET AL.,

v.

JENNIE B. ATKINSON ET AL.

Where a provision of the will was: "What money may be in Johnson's Bank to be equally divided between Jennie B. Atkinson, Paul Jones, P. L. W. Thornton and the children of my late niece, Ella M. Turley," it is held to have been the intention of the testatrix that equality of division between her next of kin was attained by giving to the children of Ella M. Turley, as a group, their mother's equal share with each of the other persons named, all of whom were nephews and nieces of the testatrix. And it is decreed that the children of Ella M. Turley (complainants) are entitled to receive together one-fourth and the defendants three-fourths of the money in bank.

In Equity. No. 11,782. Decided May 16, 1892.

The CHIEF JUSTICE and Justices JAMES and BRADLEY sitting.

Mr. W. A. JOHNSTON for complainant.

Messrs. H. and R. O. CLAUGHTON for defendants.

Mr. Justice JAMES delivered the opinion of the Court:

On the — day of — Ann Jones departed this life leaving her last will in the following words: "I am of sound mind; I will to Anne B. Atkinson my clothes and what furniture I may leave; to Miss Maggie Mitchell of Georgetown, my books, pictures and little fancy articles; my watch to Bolling Thornton; silver napkin ring and fork to little Mamie Cobb, daughter of Norvell Cobb. What money may be in Johnson's Bank to be equally divided between Jennie B. Atkinson, Paul Jones, P. L. W. Thornton, and the children of my late niece, Ella M. Turley; G. R. Atkinson to hold Paul Jones' in trust for him, paying him a certain sum per month; what he thinks will do for his support.

ANN JONES.

"I wish my large shawl and white spread given to Mrs. Mary H. Brown, of Georgetown, D. C.

A. JONES.

"If my birds are living to be given to Miss Isa Mitchell.

"My father's picture to Jennie B. Atkinson."

The complainants, two of whom are infants, suing by their next friend, are the children of Ella M. Turley referred to in the will, and grandnieces of the testatrix. They claim that the testatrix intended that each of them should share equally with the defendants Atkinson, Jones and Thornton in the money left in the bank; in other words, that each of them should have one-eighth thereof.

The answer shows that the defendant Atkinson and the wife of defendant Thornton are nieces, and that the defendant Paul Jones is a nephew of the testatrix; and claims that it was the intent of her last will that each of them should have one-fourth of the money in question, and that the children of her other niece should stand in the place of their deceased mother, and should together take one-fourth.

The question to be determined is whether, in the mind of this testatrix, the children of her niece Ella were a group, succeeding to her place, or were thought of by her as individuals, in just the same way that she thought of her niece Atkinson and her nephew Jones. And it seems that, before we decide this question, we have to consider a preliminary question; namely, whether we are bound by the authority of any judicial rule by which the intention of a testator in such provisions is to be determined.

Ever since the Statutes of Wills were enacted the courts have said that the intention of the testator was the one subject of inquiry, and was to control, provided his intent was lawful; and then they proceeded to gather from interpretations and constructions already made in what seemed to them to be analogous cases positive rules by which the intention of each later testator must be determined. The effect of this has been that each testator was obliged to mean what other testators had meant in what was adjudged to be a like case. To a certain extent this method was inevitable. For example, the courts must presume that a testator uses in the sense established by common usage the words of the language in which he expresses his intention. On the same ground it must be presumed that he uses in their technical sense phrases which have an established technical meaning. The presumption in both cases is that everybody uses language in its common sense; and it is reasonable that a rule to that

Legal Notices.**This is to Give Notice**

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of MARY A. THOMAS, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 31st day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 31st day of May, 1892.
CHARLES H. CRAGIN.
JOHN B. THOMAS.

24 Chas. H. Cragin, Proctor.

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of LEWIS JAMISON, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of June, 1892.
CATHARINE C. JAMISON,

24 Frank W. Hackett, Proctor. 2514 14 St., n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
The 10th day of June, 1892.

FANNIE P. WILLIAMS, MARY H. BELL, ROBERT RANSOM, JR., JAMES J. B. RANSOM, MATT W. McCORKLE, HENRY H. RANSOM, GEORGE G. RANSOM AND SEYMORE H. RANSOM vs. JOHN W. PAINE.

At Law. No. 32,845. Docket 37.

On motion of the plaintiff, by Mr. Franklin H. Mackey, their attorney, it is ordered that the defendant, JOHN W. PAINE, cause his appearance to be entered herein on, or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to recover a one-sixth undivided interest in square fifty-three (53) of the city of Washington, District of Columbia.

By the Court. M. V. MONTGOMERY, Justice.
True copy. Test: J. R. Young, Clerk, &c.
24 By R. Willett, Asst. Clerk.

[Filed June 10, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

This 10th day of June, 1892.

Jno. C. Wright, Plaintiff, vs. Equity. No. 13,883.

Mary A. Wright, Defendant. On motion of the plaintiff, by Mr. A. C. MacNulty, his solicitor, it is ordered that the defendant cause her appearance to be entered herein on, or before the first rule-day occurring forty days after this day.

Provided that a copy of this order be published once a week for three weeks before that day in the Washington Law Reporter and Evening Star. The object of this suit is a divorce from the bond of marriage on the ground of desertion.

A. C. BRADLEY, Justice.
A true copy. Test: J. R. Young, Clerk.
24 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Isaac Braxton, Jr., et al. vs. No. 12,144. Equity Doc. 30.

Nathaniel Braxton et al. Ferdinand Schmidt and Benjamin F. Leighton, trustees in above entitled cause, having reported a sale of the lot and premises therein described, to wit, the east one-half ($\frac{1}{2}$) of lot numbered eleven (11) in block numbered seven (7) of the Howard University subdivision of the farm of John A. Smith, commonly known as Effingham, unto one Furman J. Shadd, for the sum of fifteen hundred (1500) dollars, it is this 15th day of June, A. D. 1892, ordered, adjudged and decreed, that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 15th day of July, A. D. 1892.

Provided a copy of this decree be published in the Washington Law Reporter once a week for three successive weeks before that day.

By the Court. A. C. BRADLEY, Justice.
A true copy. Test: J. R. Young, Clerk.
24 By M. A. Clancy, Asst. Clerk.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

The 18th day of June, A. D. 1892.

Edward Campbell } vs. } No. 13,963. Equity Docket, 33.
Abbie M. Campbell. }

On motion of the complainant, by J. J. Wilmarth, his solicitor, it is ordered that the defendant, ABBIE M. CAMPBELL, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for absolute divorce upon the grounds of willful desertion and abandonment for the uninterrupted period of more than two years.

Provided that a copy of this order be published once a week for three weeks prior to said day in the Washington Law Reporter.

A. C. BRADLEY, Justice.
True copy. Test: J. R. Young, Clerk, &c.
24 By M. A. Clancy, Asst. Clerk.
[Filed June 13, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

William R. Shaw } vs. } Equity, No. 13,473.
Thomas M. Cassell et al. }

This cause coming on to be heard on the report of the trustees filed herein, it this 10th day of June, A. D. 1892, ordered that the sale of lot fourteen (14) in block eight (8) in A. L. Barbour's subdivision of Le Droit Park in the District of Columbia, made by the trustees herein and reported by them to this court, be and the same is hereby finally ratified and confirmed, unless cause to the contrary be shown on or before the 11th day of July, 1892; and it is further ordered that the purchasers of said lot of ground be and they are hereby allowed to assume the amount of the incumbrance due on said property, at the time of said sale and that the same be deducted from the purchase price of the same.

A. C. BRADLEY, Asso. Justice.
True Copy. Test: J. R. Young, Clerk, &c.
24 By M. A. Clancy, Asst. Clerk.
[Filed June 10, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

Elizabeth A. Cooper et al. vs. No. 12,714. Equity Doc. 31.
Norman L. Cooper et al. }

Charles H. Cragin, the trustee appointed by decree in this cause to sell certain real estate therein described (being part of lot 13, square 288) having reported the private offer of H. Lloyd Irvine to purchase the north 20 feet 2 inches front by depth of said lot, (67 feet 3 inches) next to the north 10 inches front thereof, for the sum of eleven thousand one hundred and fifty-five (\$11,155) dollars, it is by the court, this 11th day of June, 1892, ordered that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 11th day of July next.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to said last mentioned date.

A. B. HAGNER, Justice.
A true copy. Test: J. R. Young, Clerk.
24 By M. A. Clancy, Asst. Clerk.
[Filed June 11, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Horton C. Ryan } vs. } No. 13,740. Equity.
Gertrude A. Ryan et al. }

Job Barnard, the trustee herein, having reported a sale of lots numbered thirty-five (35) and thirty-six (36) of R. H. Ryan's subdivision of original lot numbered nineteen (19) in square numbered six hundred and ninety-three (693), in Washington City, D. C., for the sum of twenty-nine hundred and sixty dollars (\$2,960);

It is this 9th day of June, 1892, ordered that the said sales be confirmed unless cause to the contrary be shown on or before the 9th day of July, 1892.

Provided a copy of this order be published for three successive weeks in the Washington Law Reporter before the said last mentioned date.

A. B. HAGNER. A true copy. Test: J. R. Young, Clerk.
24 By M. A. Clancy, Asst. Clerk.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court Business, letters of administration on the personal estate of JAMES M. RICHARDS, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of June, 1892.

MARGARET G. RICHARDS,
24 E. M. Spalding, Proctor.

984 Fls. Ave., n. w.

This is to Give Notice

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court Business, letters testamentary on the personal estate of CYRUS K. FOSS, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 31st day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 31st day of May, 1892.

BENJ. F. LEIGHTON.
LENE M. FOSS.

24 B. F. Leighton, Proctor. 482 La. Ave., n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business.

June 9, 1892.

In the case of Christina C. Coleman, administratrix of SARA A. RICHARD, deceased, the administratrix aforesaid has, with the approval of the court, appointed Friday, the 8th day of July, A. D. 1892, at 1 o'clock p. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the administratrix will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the "Washington Law Reporter" previous to the said day.

Test: L. P. Wright,
Register of Wills for the District of Columbia.
24. No. 4467. J. J. Wilmarth, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The eleventh day of June, 1892.

Mamie E. Norment } vs. } No. 18,889. Equity Docket 33.
Clarence F. Norment et al.

On motion of the plaintiff, by Mr. Thomas P. Woodward, her solicitor, it is ordered that the defendant, BENJAMIN F. M. HURLEY, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to declare a trust as to the property mentioned in the bill of complaint, for an account, an injunction, and a receiver.

This notice to be published in the Washington Law Reporter and The Evening Star.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. B. Young, Clerk, &c.
24 By L. P. Williams, Asst. Clerk.

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of GEORGIANA GOUGH, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of June, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of June, 1892.

MAYHEW PLATER,
24 C. M. & H. S. Matthews, Proctors.

3108 N street.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, letters testamentary on the personal estate of WILLIAM KICKHAM, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of June, 1892.

M. J. ADLER,
24 C. M. & H. S. Matthews, Proctors.

3148 M St.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphan's Court business, letters testamentary on the personal estate of SPENCER A. COE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 11th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 11th day of June, 1892.

THOMAS I. GARDNER,
1518 S St., n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of GEORGE THWAITES, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 11th day of June, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 11th day of June, 1892.

THE WASHINGTON LOAN AND TRUST CO..

24 John B. Larner Proctor. By Andrew Parker, Asst. Sec.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

Holding a Special Term for Orphans' Court Business,

This 10th of June, 1892.

In re estate of MARIA BARCROFT, late of the District of Columbia, deceased. No. 5047. Administration Doc. 18. Application having been made for letters of administration on the estate of said Maria Barcroft, deceased, by John G. Lee, one of the next of kin who prays that such letters may be issued to Chapin Brown of Washington, D. C.

Notice is hereby given to all concerned to appear in this court on July 8, 1892, at one o'clock p. m., to show cause if any exist against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter, once in each of three successive weeks before said day.

By the Court: A. C. BRADLEY, Justice.
A true copy. Teste: L. P. WRIGHT, Reg. of Wills, D. C.
24 Chapin Brown, Proctor for applicant

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

Holding a Special Term for Orphans' Court Business,

This 10th of June, 1892.

In re estate of JOHN A. RICKETTS, late of the District of Columbia. No. 5048. Administration Doc. 18.

Application having been made for letters of administration on the estate of said John A. Ricketts, deceased, by Emeline Ricketts, the widow, who prays that such letters may be granted to James H. Fowler, of Washington, D. C.

Notice is hereby given to all concerned to appear in this court on Friday July 8th, 1892, at one o'clock p. m., to show cause if any exist against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter once in each of three successive weeks before said day.

By the Court: A. C. BRADLEY, Justice.
A true copy. Teste: L. P. WRIGHT, Reg. of Wills, D. C.
24 J. Thos. Sothonon, Proctor for applicant.

Legal Notices.**This is to Give Notice**

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of ELIZABETH BITNER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 3d day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 3d day of June, 1892.

ROBERT BOYD,
416 9th St., n. w.

24

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of JAMES MALONEY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of June, 1892.

L. W. SNOOK,
117 2d St., n. w.

24

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of JAMES W. ST. CLAIR, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day of June, 1892.

Z. S. BUCKLER,
911 O St., n. w.

24

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of STEPHEN CASEY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of May, 1892.

J. WILLIAM LEE,
332 Pa. Ave., n. w.

24

THIRD INSERTION.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

Susie G. White | No. 13,263, Equity Doc. 32.
vs. |
Samuel L. Phillips et al. |

Sidney T. Thomas and Clarence A. Brandenburg, trustees in this cause, having reported the sale of the real estate described in the bill of complaint, being the west 25 feet of lot No. 6 and the east half of lot No. 7, in square or reservation lettered A, together with the improvements thereon, to Jacob J. Appich, for \$7,375 cash:

It is, by the court, this 2d day of June, 1892, ordered that said sale be ratified and confirmed unless cause to the contrary thereof be shown on or before the 26th day of June, 1892.

Provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said 26th day of June, 1892, and also in The Evening Star.

A. B. HAGNER, Asso. Justice.
A true copy. Test: J. R. Young, Clerk,

By M. A. Clancy, Asst. Clerk.

[Filed June 2, 1892. J. R. Young, Clerk.]

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business.**

This 3d of June, 1892.

In re estate of EDWARD W. REMEY, late of the United States Navy. No. 5,033. Admn. Doc. 18.

Application having been made for letters of administration on the estate of said Edward W. Remey, deceased, by Captain George C. Remey, U. S. N.:

Notice is hereby given to all concerned to appear in this court on Friday, the 1st day of July, 1892, at 1 o'clock p. m., to show cause, if any exist, against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter and Evening Star once a week in each of three successive weeks before said day.

By the Court. A. B. HAGNER, Justice.
23 A true copy. Teste: L. P. WRIGHT, Reg. of Wills, D. C.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of CATHERINE COTTRELL, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23d day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23d day of May, 1892.

WARD THORON,
23 Ward Thoron, Proctor. 1506 Penna. Ave., n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of HENRY R. PYNE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23d day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of May, 1892.

ELIZABETH A. PYNE,
612 Eighteenth St., n. w., City.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business.**

This 3d of June, 1892.

In re estate of CATHARINE GRAHAM, late of Washington, D. C. No. 5027. Admn. Doc. 18.

Application having been made for the probate of a paper-writing propounded as the last will and testament, and for letters testamentary on the estate of said Catharine Graham, deceased, by Bartholomew Diggins:

Notice is hereby given to all concerned to appear in this court on Friday, July 1st, 1892, at one o'clock p. m., to show cause if any exist against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter and Washington Post once in each of three successive weeks before said day.

By the Court. A. B. HAGNER, Justice.
23 A true copy. Teste: L. P. WRIGHT, Reg. of Wills, D. C.
23 Gordon & Gordon, Proctors for applicant.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 7th day of June, 1892.

Mary C. King, complainant,

vs.

Clement J. Bright, Mary E. Taylor, Edwin Bright, Martha A. King, Jesse Bright, F. Marcellus Cox.
No. 13,883. Equity Docket 33.

On motion of the plaintiff, by Mr. Franklin H. Mackey, her solicitor, it is ordered that the defendants, F. Marcellus Cox, Clement J. Bright, Edwin Bright and Jesse Bright, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a construction of the will of Thomas McDonnell.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
23 By L. P. Williams, Asst. Clerk.
[Filed June 7, 1892. J. R. Young, Clerk.]

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WASHINGTON, D. C., - - - JUNE 30, 1892

Supreme Court of the District of Columbia,
IN GENERAL TERM.

WHEELAN v. YOUNG.

1. If the subcontractor (Whelan) had immediately after his contract, filed his notice of lien, which he could have done under the law (Act of July 2, 1884) Mrs. Young would have had notice of his claim; her property would have been subject to a lien for the whole amount of work to be done under the sub-contract, to the plumber.
2. As against judgments, mortgages and deeds of trust, the liens of the sub-contractor and the material man operate from the commencement of the work and have a retroactive preference and priority. But this is the utmost extent to which the law goes in giving to the lien a relation backward.
3. The builder is entitled, upon filing his notice, to a lien on the property for the whole contract price. The sub-contractor upon filing his notice of lien, intercepts so much of the contract price as the builder is to pay him, and to that extent displaces the builder's lien or right of lien and becomes lienor in his place. In this way and to this extent he acquires a preference over the builder.
4. There is nothing in the statute which requires that a lien so acquired by the sub-contractor has a retroactive priority over the builder's right to his periodical payments, which matured before the subcontractor's notice of lien was filed.
5. As against the owner and the builder the law gives no backward relation to the lien of sub-contractor or material man, and there is nothing in the statute to take it out of the general rule that the lien should operate only from the giving of notice on the record.

In Equity. No. 11,667. Decided June 27, 1892.

The CHIEF JUSTICE and Justices HAGNER, COX, and JAMES sitting.

Mr. SAMUEL MADDOX for plaintiffs.

Messrs. LEON TOBRINGER, EDWARDS & BARNARD and WILLIAM F. MATTINGLY for defendants.

Mr. Justice COX delivered the opinion of the Court:

On the 9th of June, 1888, Hanson C. Walter entered into a written contract with Mrs. Young, the defendant, to build a house for her and complete it by December 1, following, for the sum of \$8,063.91, to be paid in eight install-

ments as the work progressed, and the contractor was to forfeit \$5 for every day's delay in completing the house beyond the time agreed on.

Mrs. Young paid six of the installments amounting to \$4,900, when, on the 17th of December, sixteen days after the house was to have been completed, Walter abandoned the work, leaving the house unfinished and \$1,163.91 of the contract price yet unpaid. It is admitted, by stipulation, that Mrs. Young, after Walter's abandonment of the contract, paid \$544.60 in order to complete the house according to contract. This would leave \$620.31 of the contract price unexpired.

It is further admitted that without negligence on her part she was unable to have the house completed until May 23, 1889.

If she be allowed to charge the \$5 per day as liquidated damages for the delay, the balance of the price would be more than absorbed.

In the meantime, on the 17th of December, 1888, the day Walter abandoned his contract, the complainant, Wm. Whelan, filed his notice of lien for the sum of \$492. He was followed by others, the claims of all amounting to \$2,315.53.

This bill was filed on the 9th of March, 1889, for all the alleged lienors to enforce the liens by a sale. It was dismissed as to Whelan and one other, Chappellear, whose claim was for \$51.05, and who has died, but a decree rendered in favor of the rest for claims amounting to \$1,772.53, and an appeal taken by both sides.

As far as we can gather from the printed record, Whelan's claim must have been dismissed, because the proof showed that he had been working for Walter on various houses, had mixed his accounts all up together and received payments from him during the building of Mrs. Young's house, which probably ought to have been credited to that work, but were not. There is one question, however, common to all the claims.

The broad question is, whether a subcontractor who postpones filing his notice of lien until the principal part of the contract price has been paid, according to the terms of the contract, can, by filing his notice, assert a lien on the owner's property for his entire claim, although it may exceed in amount what remains due under the contract. This will depend upon the time from which the lien is to attach and operate.

If we seek the meaning of the existing law by the usual test, i. e., by considering the old

law, the mischief and the remedy, what do we find?

By the old law, as embodied in section 709, R. S. D. C., the subcontractor's remedy was to give notice of his claim to the owner and that he held said owner responsible, and he thereby acquired simply a formal claim against the owner, not to exceed, however, the amount due from him to his contractor at the time of the notice. What mischief, under this law, Congress intended to remedy one can only conjecture. In argument, it was claimed that the mischief was the possible combination between the owner and the builder to prevent the subcontractor from receiving anything by so manipulating accounts that nothing would appear to be due when the subcontractor's notice should be given.

Assuming this to have been the mischief contemplated, the present case will illustrate the manner in which it is remedied by the Act of July 2, 1884, which is the law now in force. That act declares (section 1) that "every building hereafter erected or repaired by the owner or his agent in the District of Columbia, and the lot or lots of ground of the owner upon which the same is being erected or repaired, shall be subject to a lien in favor of the contractor, subcontractor, material man, journeyman and laborer, respectively, for the payment for work and materials contracted for or furnished for or about the erection, construction or repairing of such building, and also for any engine, machinery or other thing placed in said building or connected therewith so as to be a fixture: Provided that the person claiming the lien shall file the notice prescribed in the second section of this act: Provided, further, that the said lien shall not exceed or be enforced for a greater sum than the amount of the original contract for the erection or repair of said building or buildings."

By the second section, the contractor or subcontractor, etc., may file the notice of lien at any time during the construction or within three months after the completion of the building. In this case it appears that the contract between the defendant and Walter was dated June 9, 1888. A few days afterward and perhaps before the work was begun, Whelan, as subcontractor, made his bid for the plumbing, according to the plans and specifications, at and for the sum of \$492, which was accepted, and the work begun by him in the same month.

Now, if he had immediately filed his notice of lien, which he could have done under the law, Mrs. Young would have had notice of his claim;

her property would have been subject to a lien for the whole amount of work to be done under the subcontract; she could not have made any arrangement with the builder to the prejudice of the plumber, and the latter would have been perfectly protected, and at the same time Mrs. Young, the owner, would have known exactly how much of the money she had contracted to pay her builder ought to go to the subcontractor, and would have paid this money to the builder with her eyes open and at her own risk. The objects of the law would have been entirely accomplished.

But the position taken by complainant is, in substance, that if the notice of lien is not filed until after the completion of the work or after the principal part of the contract price has been paid in pursuance of the contract, still, it operates retroactively, so as to give a lien for the whole amount of the claim, *as from the beginning of the work*, making the payments that have been made in the meantime by the owner to his builder, though in good faith and in perfect accordance with his agreement, to be payments in his own wrong and at his own risk, as if they had been made with full notice and anticipation of the lienor's rights.

Now, this construction of the law, while it does promote one of its objects, viz: the protection of the subcontractor, in effect, defeats another, which is the protection of the owner; because it would compel him to pay more than the contract price, against which he is intended to be guaranteed by the second proviso in the first section of the law. That this would be in contravention of the law, in this respect, was held in a somewhat similar case to the present, *Doughty v. Delvin*, 1 E. D., Smith's Rep., 636, where the court says: "The language is that the owner shall not be obliged to 'pay for or on account of such house,' etc., any greater sum or amount than the price stipulated in and by his contract. Now, if after the house is finished and paid for by the owner, according to his contract, and without any notice of claim being filed, a laborer or material man may file such notice, have a lien and compel a further payment, the owner is obliged to pay for his house, in consideration of such lien, a greater amount than he contracted to pay."

Is there anything in the law that requires us to hold that the lien of the subcontractor or material man is to be considered as binding and operative from a date prior to the filing of the notice? As a rule, it may be safely stated, that where rights or priorities are to be acquired by making notices, conveyances or other instru-

ments a matter of record, they operate only from the date of the record. In times past there were examples of a contrary rule, but any other rule would now be considered unjust, if not absurd.

At common law, a judgment had relation back to the commencement of the term and bound the property then owned by the defendant, though he may have parted with it before the judgment. But this was changed by the Statute of Frauds, which made the judgment operate only from the date when it was docketed.

So, under our old recording acts, if a deed of conveyance was recorded within six months after its execution it had relation back to the date of execution and would prevail over other deeds executed in the meanwhile; but this was so manifestly unjust and offered such plain opportunity for fraud that it was altered by Act of Congress of later date, which gives operation to such instruments, as to third persons, only from the date of their registration.

We may safely say that we ought not to construe any law as operating differently from the general rule above stated, unless we are compelled to do so by very plain language.

Now, our statute does not in terms declare that these liens shall operate from the commencement of the work. It does so, in effect, in a certain class of cases, by providing that these liens shall be preferred to all judgments, mortgages, deeds of trust, liens and incumbrances attaching subsequently to the commencement of the work. As against these, the liens do operate from the commencement of the work and have a retroactive preference and priority. The owner is forewarned that these liens may be filed at any time up to three months after the completion of the work and he shall not be allowed to *forestall* them by encumbering the property in the meanwhile.

But this is the utmost extent to which the law goes, in giving to the liens relation backward and a retroactive operation. And all this is entirely inapplicable to the relations between the builder and his subcontractor or material men. As to any preference between them the statute is silent, but inferentially we can determine how far such preferences must exist.

The owner has undoubtedly a right to bind himself to the builder to pay the contract price in instalments as the work progresses. Building operations would otherwise be impossible. The builder is entitled, upon filing his notice, to a lien on the property for the whole contract price. Two persons, however, cannot have distinct liens for the same debt; and as the law

also gives the subcontractor a right of lien, it would seem to follow that upon filing his notice of lien he intercepts so much of the contract price as the builder is to pay him, and, to that extent, displaces the builder's lien, or right of lien, and becomes lienor in his place. In this way and to this extent, he acquires a preference over the builder. But there is nothing in the statute which requires us to hold that a lien so acquired by the subcontractor has a retroactive priority over the builder's right to his periodical payments which matured before notice of lien was filed. The owner is forbidden to encumber the property to strangers to the prejudice of either his contractor or the latter's subcontractors, but he is not forbidden to make his periodical payments to his contractor, as he has agreed to do—for otherwise the work could not go on—unless such payments are arrested in advance by the notice of lien.

As against the owner and the builder the law gives no backward relation to the lien of subcontractor or material man and there is nothing in the statute to take it out of the general rule that the lien should operate only from the giving of notice on the record. And, unless constrained so to do by very explicit language, we certainly would not give to the statute an interpretation that would work such manifest injustice as that which is contended for.

If the lien had been given expressly from the date of filing the notice, but without any restriction as to amount, we would have had to consider the grave question how far such an enactment would be constitutional. But fortunately, as if to meet this very difficulty, the second proviso forbids the lien to be enforced for a greater sum than the original contract.

The idea was advanced in argument, with a slight show of authority for it, that the contract makes the builder an agent of the owner to bind his property by subcontracts, express or implied.

We do not admit the justice of this view. There is no privity between the owner and the subcontractor and the rights of the latter as against the owner, are purely statutory and do not grow out of any privity of contract. Otherwise the owner would be bound by every admission and declaration of the contractor in his dealings with his employees and subcontractors and would be committed to obligations which he could not anticipate, to persons whom he never heard of. The Court of Appeals of Maryland in *Treusch & O'Connor v. Shryock et al.*, 51 Md., 162, very properly, as we think, rejects this theory of agency.

Again it is sought to throw upon the owner the burden of protecting himself by exacting security from the builder and by detaining the price until he is satisfied that all the subordinate parties in interest are paid.

This seems wholly unreasonable. A very special and extraordinary privilege is given to subcontractors and material men, of burdening the property of a person with whom they have no privity, of contract, upon the simple condition of filing a notice in the clerk's office, which costs no time or trouble and saves the rights of all parties. Surely the burden ought to be upon them of asserting their statutory rights so diligently as to avert loss to anybody.

The subcontractor necessarily knows that there is a contract and is put upon inquiry as to its terms. But the owner is not informed as to the existence of subcontract or as to dealings with material men and laborers, and it would be imposing a most onerous duty on him to hold that he cannot make a payment to his builder without first canvassing the town to ascertain who have furnished materials or labor to his house, and convening them all, to see that his contractor does not withhold their dues from them. This would be equivalent to holding that he is bound to know and ascertain at his own risk who all these parties are before he receives any notice from them. It is inconceivable that any legislative body ever intended to make the operation of building so hazardous.

The statutes of the different States on the subject differ, and it is, therefore, not easy to find cases strictly analogous to the present; but we conceive the general propositions we have laid down to be sustained by the following cases; Carman v. McIncrow, 13 N. Y., 72; Doughty v. Devlin, 1 E. D. Smith, 636; Dore v. Sellers, 27 Cal., 588; Blythe v. Poultney, 31 Cal., 233; Henley v. Wadsworth, 38 Cal., 356; Renton v. Murray, 49 Cal., 185; Spalding v. Thompson, 27 Conn., 373.

The decree is therefore reversed as to the liens which were sustained and affirmed as to the others.

Compulsory Physical Examination in Divorce and Criminal Cases.

Sec. 1. Divorce Cases.

Sec. 2. Criminal Cases.

Sec. 3. Witness examined.

Sec. 1. DIVORCE CASES. In divorce proceedings, courts, upon a proper showing, have uniformly exercised the power of ordering the examination of either one or both parties. The

cases in which this is done are applications for divorce on the ground of impotency; and the reason for the exercise of the power is that "nature has provided no other means; and we must be under the necessity either of saying that all relief is denied, or of applying the means within our power. The court must not sacrifice justice to notions of its own." The court which used this language said: "If there is just reason, either to suspect the truth of the statement, or to think the injury inconsiderable, the court will hesitate before it descends to modes of proof which are painful." Then speaking of the age of the person to be examined, the court added: "The age is entitled to just consideration. The injury is very different from that which may occur in an earlier period of life, at a time of life when the passions are subdued, and marriage is contracted only for comfortable society. The exposure also of the person at an advanced age of life may be felt with greater abhorrence, and complied with with much more reluctance than in the case of a younger person." The court dismissed the petition, for it appeared that the husband was insincere in his statements for a divorce. Briggs v. Morgan, 3 Phila., 325; 1 Eng. Cl., 408; 2 Hagg., Con., 324. In an American case it was said by the court: "And I have no doubt as to the power of this court to compel the parties in such a suit, to submit to a surgical examination, whenever it is necessary to ascertain the facts which are essential to the proper decision of the cause. But a lady will not be compelled to submit to a further examination when it appears that she has already submitted herself to the examination of competent surgeons, whose testimony can be readily obtained. Investigations of this kind are always indelicate, and the mode of proof to which resort must of necessity be had, must frequently be very distressing to the feelings of parties. It would, therefore, in most cases, be better that the party complaining should submit to a dis-appointment, and by an amicable arrangement agree to separate, rather than to bring the cause before a court for its decision thereon." An examination of the woman defendant by matrons was ordered. Devanbagh v. Devanbagh, 5 Paige, Ch. 509; 28 Am. Dec., 442.

In Newell v. Newell, 9 Paige, Ch. 25, the court ordered an examination of the wife, even though she had been examined *ex parte* by her own physicians, and the husband, with the sanction of the court, was allowed to select the physicians; and she was also required to answer under oath interrogations touching her alleged incapacity, for the use of physicians. She also

was permitted to have present such physicians as she desired. The court recommended the parties to agree upon the physicians, and to have them prepare interrogatories for the woman to answer, with a view to aid the physicians in arriving at a correct result. If they could not thus agree, the court said it would select the physicians, and frame the interrogatories by the aid of medical assistance. As the woman lived in another State the court ordered her temporary alimony to be withheld until she complied with the order of the court.

In Vermont the court considered that it had the power to order an examination on the ground that impotency was a cause for a divorce, and as that cause could not ordinarily be proved by witnesses, it would "amount to an absolute denial of justice," not to order it, "and that part of the statute making this a cause for nullifying a marriage would be a dead letter." "Upon authority and reason," the court continued, "we are clearly satisfied that the power exists in the court to compel such examination, although the statute does not provide for it." The court appointed a commissioner to examine the husband under oath and to conduct an examination of his person, such commissioner to select two or more physicians for that purpose. *Le Barron v. Le Barron*, 35 Vt., 364.

In Alabama the power of the court to order an examination was not doubted; but as the motion for it came after publication had passed it was deemed a matter of discretion with the chancellor; and the exercise of that discretion was not reversible on error or appeal. *Anonymous*, 35 Ala., 226.

In New Jersey the court held that it had full power to order an examination, but denied it in consideration of the wife's age, she being in her sixty-ninth year. *Shafto v. Shafto*, 28 N. J. Eq., 34.

In Canada the power to order an examination is exercised. *Darrow v. Laurent*, 17 L. Cas. Jur., 324.

In Ohio the power to order an examination was denied, 2 West Law Jour., 131, but by a recent decision, elsewhere referred to, no doubt any longer exists that the court possesses that power. *Simmons v. Green*, 35 Ohio St., 104. When the defendant refused to submit to an examination, his refusal taken in connection with the admissions in his sworn answer, that he had taken legal opinion on the validity of the marriage, coupled with his confession of non-consummation, a divorce was decreed. *Harrison v. Harrison*, 4 Moore, P. C. 96, S. C., 3 Curt. Eccl., 1; 7 Eng. Eccl., 357. So the ad-

mission of the defendant was used to supplement the examination of the physicians. *Cumyns v. Cumyns*, 2 Phil. 10; S. C., 1 Eng. Eccl., 165. An inspection in *Aleson v. Aleson*, 2 Lee, 576, was denied, because there had not been a triennial cohabitation. The court will not order an examination until the necessity for it is clearly shown. *Anonymous, Deane & Sw.*, 295. The confessions of the party charged with impotency are always admitted, and are of considerable weight when he refuses to submit to an examination, and where there is no reason to suspect collusion. *Pollard v. Wybourn*, 1 1 Hagg. Eccl., 725; 3 Eng. Eccl., 308. Where the defendant had never been examined, and she could not be found, it being supposed she was out of the jurisdiction of the court, the decree was suspended in order to give the petitioner an opportunity of being examined if she could thereafter be found within the jurisdiction. There was no evidence of impotency. *T. & M. 1 P. & D.*, 31. Where a woman refused to submit to an examination, a motion for an attachment against her was ordered to stand over until after the hearing of the petition. *B. & L. 1 P. & D.*, 639. Other cases showing the practice of the English courts in these examinations are as follows: *D. v. A.*, 1 Robt. Eccl., 279; *H. v. C.*, 1 Sw. & Tr., 605; *Essex v. Essex*, 2 How. St. Tr., 786, (an examination of a woman by matrons); *S. v. E.*, 3 Sw. & Tr., 240; *M. v. H.*, 3 Sw. & Tr., 517; *M. v. B.*, 3 Sw. & Tr., 550; *F. v. D.*, 4 Sw. & Tr., 86; *L. v. H.*, 4 Sw. & Tr., 115; *W. v. H.*, 2 Sw. & Tr., 240; *Serrell v. Serrell*, 2 Sw. & Tr., 422.

In a recent Alabama case an examination of the complainant was decreed to be made either by physicians or by matrons skilled in such matters, to be appointed by the chancellor, and proof of such examination by the persons so appointed, showing that the default was not with her, was made an indispensable condition of relief. If she refused to submit to the examination, her bill was ordered to be dismissed. The defendant was also ordered to submit to the examination as a condition of his right to combat the right of the complainant. *Anonymous*, 39 Ala., 291, 7 South. Rep., 100. See the practice in this kind of cases in England, *B v. L.*, 16 W. R., 943.

In Michigan the power of the court to enforce such examinations is stoutly denied, the court saying: "It should be understood that there are some rights which belong to man as man and to woman as woman, which in communities they can never forfeit by becoming parties to divorce or any other suits, and there

are limits to the indignities to which parties to legal proceedings may be lawfully subjected. *Page v. Page*, 51 Mich., 88.

Sec. 2. CRIMINAL CASES—In criminal cases constitutional provisions must be considered in determining whether a defendant can be compelled to submit to an examination; such provisions as “no man ought to be compelled to give evidence against himself,” or “no person in any criminal prosecution shall be compelled to testify against himself,” or “no man, in a court of common law, shall be compelled to give evidence criminating himself,” and the like. In North Carolina it was held that the court had no right to compel the defendant in a criminal prosecution to exhibit himself to the inspection of the jury for the purpose of enabling them to determine his status as a free negro. *State v. Jacobs*, 5 Jones L. (N. C.), 259. But when the coroner compelled the accused to exhibit her hand, in order to determine her guilt or innocence, evidence of the condition of the hand as it was when exhibited was allowed to be given at the trial of the accused. *State v. Garrett*, 71 N. C., 85, 17 Am. Rep., 1. But where the condition of the accused’s leg became material as a matter of identification, the lower part having been cut off, it was held error to compel him to exhibit it to the jury. *People v. Mead*, 50 Mich., 228. Nor can an accused be required to try on a shoe to determine whether tracks found at the scene of the offense were made by him. *Blackwell v. State*, 67 Ga., 76. Nor to put his foot in a pan of soft mud in order to compare the impression thus made with the foot tracks found near the scene of the crime. *Stokes v. State*, 5 Baxt., 619; 30 Am. Rep., 72. It is not error to require a witness to point out the accused who is present at the trial. *State v. Johnson*, 67 N. C., 55. But an accused cannot be compelled to put his foot in prints found near the scene of murder, for the purpose of identification. *Day v. State*, 63 Ga., 667. When the defendant was charged with having murdered her illegitimate child at birth, it was held that the coroner could not send two physicians to the jail to examine her, and thus, against her will, forcibly obtain evidence of her guilt. *People v. McCoy*, 45 How. Pr., 216. Notwithstanding these cases it has been held that the officers arresting the accused may compel him to put his foot in a track found near the place of the crime, and that they may testify as to the result of the comparison. *State v. Graham*, 74 N. C., 646; 21 Am. Rep., 493; *Walker v. State*, 7 Tex. App., 245; 32 Am. Rep., 595. So it has been held that an

accused can be compelled to lay bare his arm to see if it has certain marks upon it, for the purpose of identification. *State v. Ah Chuey*, 14 Nev., 79; 33 Am. Rep., 530.

Sec. 3. WITNESS EXAMINED.—On a criminal charge of rape, the prosecutrix being a child of seven and one-half years of age, the court held that it was not error to refuse to compel an examination of the child by physicians, in order to determine if she had been injured. *McGuff v. State*, 88 Ala., 147; 7 South. Rep., 35; *Barnett v. State*, 83 Ala., 40; 3 South. Rep., 612.

W. W. THORNTON, *Indianapolis, Ind., in Central Law Journal*.

Supreme Court of Pennsylvania.

BAUCK v. SWAN.

1. A married woman, with the consent of her husband, has the power to make a contract for the sale of her real estate by an agent, the agent in such a case can recover compensation for the sale in an action against the husband and wife.
2. The Act of June 8, 1887, gives to married women the power to sell their real estate with the same effect as if they were *femes sole*, the only restriction being contained in the proviso clause of the section which requires the husband to join in the deed.

Decided January 4, 1892.

Appeal of James M. Swan and Isabella A. Swan, his wife, defendants, from the judgment of the Court of Common Pleas No. 2, of Allegheny County, in an action of assumpsit brought by A. W. E. Bauck to recover a certain amount as compensation for services rendered to Isabella A. Swan in selling certain real estate belonging to her.

The facts, set forth by MAGEE, J., in his charge to the jury, were in part as follows:

“This is an action of assumpsit. It is brought by the plaintiff to recover from Isabella A. Swan, impleaded with her husband, James M. Swan, the sum of \$300, with interest on the same from the 19th day of September, 1889, for services rendered to said Isabella A. Swan, by said plaintiff, in procuring a purchaser for certain real estate, containing sixteen acres, conveyed afterwards to one Henry Wesner by deed dated August 1, 1889, and recorded in Deed Book Vol. 657, p. 307; the said services having been rendered pursuant to a contract, or alleged contract, made with the said Isabella A. Swan, through her husband and agent, James M. Swan, on or about the 18th day of March, 1889. The plaintiff says further that he advertised the property for sale and obtained an offer of \$2,150 for the sixteen acres from the said Henry Wesner;

that he submitted the proposal to the said Isabella A. Swan through her husband, with an agreement on his part in connection with his proposal, as I understand the testimony, that he would accept for his services the sum of \$300 instead of the before agreed upon compensation of all over \$100 per acre obtained for the sale of from ten to twenty acres of the property, which proposition, the plaintiff says, was accepted and agreed upon by the said Isabella A. Swan. That the said Isabella A. Swan delayed carrying out her agreement for some time, and, in the following August, completed the sale and made a conveyance of said land to the said Henry Wesner, and refused to pay the said plaintiff for his services as by her contract she had agreed to do. Now he says the negotiations were conducted with the husband with one exception, when the plaintiff called on Mrs. Swan, so he says, and had a talk with her stating what had been done; I believe that is what he said; at which interview she acknowledged she had authorized the sale and agreed to the terms of sale and the sum of \$300 as his compensation for his services. That is what the plaintiff says was the result of the interview he had with Mrs. Swan. He says that afterwards, or some time along there (and I want to say right here, do not take my recollection of any facts if it does not coincide with your own recollections of the testimony, because you have to find the facts from the evidence, and I am only aiding you as far as I can), that afterwards the husband declined, for some reason, to carry out the sale; that is, the communication of the declination to carry out the sale came through the husband, and he refused to pay the stipulated compensation agreed upon. Such, in brief, is my recollection of the testimony of the plaintiff; and, with one or two facts in the way of corroboration, it is mainly and almost entirely dependent upon his own testimony as to what was the contract between the parties. Now, it is not denied that the sale to Henry Wesner of the sixteen acres, which, as alleged, is involved in this controversy, was made by Mrs. Swan and her husband to Henry Wesner, and the deed is in evidence.

"Now, you have on behalf of the defense the four witnesses who have been upon the stand; and the main witnesses are the husband and the wife. It is conceded that the property is that of the wife; and, in law, a conveyance of the wife's property cannot be lawfully made unless joined by the husband. In this instance the property that is involved in the transaction, the sale of which is alleged to have been made

by the plaintiff as the agent of Mrs. Swan is the property of Mrs. Swan. Mr. Swan says in a general way (I am not giving you the language) that the property was for sale; that he had no authority from his wife to make a sale, and that he never did make any arrangement with anybody by which they were to act as an agent in the securing of a purchaser for the property. It was for sale, or offered, and any propositions that were made to him in relation thereto were submitted by him to his wife, and that he brought any answer that she had to make, but he was not acting as her agent in any respect whatever, and that he had no authority whatever to act for her or to subject her to the expense of a transaction of that kind, in employing a man to make sale and to agree upon compensation. In the second place he said he did not do it; he did not understand that the plaintiff was a real estate agent. He thought he was, according to his statement at all events, a man that was wanting to buy the property himself. That, of course, is a conflict of testimony between Mr. Bauck and Mr. Swan. Mr. Bauck says he did understand it. Mr. Swan says he did not understand anything of the kind, that he was dealing in that way, and denies that he authorized him to do anything of this kind and subject himself or his wife to any expense. That is what he says. Now the wife says that she was not aware of any contract arrangements in connection with the property at all; that she did not authorize her husband to make any sales or burden her with any costs in connection with it; that she was wanting to sell and that she was willing to sell; that she wanted \$150 per acre, or something like that, cash for her property; that she was willing to sell, and that there were two other people that were negotiating about the property at the time and that she was not authorizing any one to subject her to any expense or hunt up purchasers for a compensation or anything of that kind. That is her story. She says she did not know that Mr. Bauck, and Mr. Bauck says he did not know her until the time that he says he went, and which, he says, was the fact, that he did go there and give a detailed statement of what occurred, so far as his recollection and his understanding of it enabled him to do. Their testimony is conflicting, of course, again. She says that she did not agree with him to pay him anything at all, but told him that she did not authorize anybody to act for her, her husband or anybody else.

Now this statement Mr. Quall denies any recollection of. Either he could not recollect it,

or it couldn't be true, or, it didn't occur. There is a difference of opinion between Mr. Bauck and the others as to what occurred at Mr. Swan's place in relation to what Mr. Swan said, "striking him on the shoulder and saying 'I have got that matter fixed now with Bauck.'" He said he did not recollect anything of the kind, and if it did occur he did not see it or not hear it. Mr. Bauck says he was one of the persons that was present and he was there.

That is only corroborative, of course. That don't make Mr. Swan the agent of his wife. The only thing that makes Mr. Bauck her agent is the interview that took place between themselves—I mean in the testimony that is presented; because the law does not permit it to be presumed that the husband is agent of the wife merely by establishing the relationship of husband and wife between them. That is not the way that the law requires that the agency of the husband for his wife for her own property can be established. It can be established just the same as it would be between any other persons, strangers; and that, of course, must be shown by showing what the practice has been, whereby he, either directly or by such other acts as import an agency, has established that relationship between the parties."

Mr. Justice GREEN delivered the opinion of the Court:

The first section of the Act of June 3, 1887, P. L., 332, provides, that "every married woman shall have the right to acquire, hold, possess, improve, control, use or dispose of her property real and personal, in possession of expectancy, in the same manner as if she were a *feme sole*, without the intervention of any trustee, and with all the rights and liabilities incident thereto, except as herein provided, as if she were not married." That this law gives no married women the right to sell their real estate with the same effect as if they were *femes sole*, except with the restriction contained in the proviso clause of the section requiring the husband to join in the deed, cannot be doubted. The case of the Real Estate Investment Co. v. Roop, 132 Pa. St., 496, decides that general contracting power was not given to married women by the Act of 1887, and therefore she could not confess a judgment for borrowed money. But that case did not raise any question as to the right of a married woman to dispose of her land, and therefore it is not applicable to the question raised here. The claim of the plaintiff is based upon a contract alleged by him to have been made with the husband of Mrs. Swan by her authority, and ratified by her after full knowl-

edge of its terms and conditions, by which he was engaged to sell certain land for Mrs. Swan upon certain terms as to his compensation. The plaintiff testified fully as to the contract and its ratification by Mrs. Swan, and gave corroborating testimony by a purchaser and others. Both of the defendants denied the making of such a contract and its ratification by Mrs. Swan, and this raised a question of fact, which was very carefully and patiently submitted to the jury by the learned court below, and the jury found a verdict for the plaintiff for the full amount of his claim. The verdict accredited the witnesses for the plaintiff, and discredited the witnesses for the defence, and, as that is a function which it is the exclusive province of the jury to administer, the courts are bound by their action. There was sufficient testimony to support the verdict, and therefore we cannot sustain the only assignment of error that is brought before us.

The question whether the defendant, Mrs. Swan, as a married woman, had the lawful power to make a contract for the sale of her real estate by an agent, seems to be included in the question, whether she could sell her land at all. We are clearly of the opinion that she could sell her land of her own volition, and it seems to us she could, therefore, lawfully employ an agent to sell it for her. Her power to sell is as large as if she were a *feme sole*, and, of course, if she were a *feme sole*, she would have the power to employ an agent to make the sale. The act not only gives her the "right to acquire, hold, possess, improve, control, use and dispose of her property, real and personal, in the same manner as if she were a *feme sole*," but also, "all the rights and liabilities incident thereto * * * as if she was not married." We cannot hold that she has not the power to sell her land as if she were unmarried without refusing to enforce the plain meaning and intent of the Act of 1887, and that we have neither the right nor the desire to do.

Judgment affirmed.

MORTGAGES—Strict Foreclosure in New York.—Where a mortgage has been foreclosed and through mistake or excusable neglect the holder of a junior mortgage was not made a party, a court of equity, at the suit of the purchaser, may order such holder to redeem from the foreclosed mortgage within a certain time or be forever debarred from all equity of redemption in the premises, and this notwithstanding C. P., Sec. 1626, providing for the ordinary action of foreclosure.

The court quotes from 43 N. Y., 474, that

this would have been the practice before the passage of the Code, and continues: "It is insisted by the appellant that section 1626 has cut off the equity practice as it existed prior to the code."

We find in Thomas on Mortgages and in Willard on Mortgages, it is suggested that such possibly may be the effect. Neither of the authors, nor does the appellant in this case cite any authority for holding that such is the effect of the section. Notwithstanding that section we think the remedy as it has heretofore been used by the courts of equity remains." Moulton v. Cornish, N. Y. Supreme Court, General Term, Fourth Department, November, 1891. Opinion by HARDIN, P. J.—*The Counsellor*, N. Y. Feb., 1892.

Circuit Court, D. Iowa.

O'NEILL v. CHICAGO & N. W. Rwy. CO.

MASTER AND SERVANT—PERSONAL INJURIES— NEGLIGENCE.

A carpenter in a railroad yard was standing upon a ladder which leaned against the car he was repairing, when a locomotive came against the train, threw him to the ground, and injured him. The fireman saw him in ample time to notify the engineer, but said nothing until the locomotive was about a car-length away, when he cried out "Whoa!" Thereupon the engineer reversed the engine, and almost stopped; but, receiving a signal to proceed from the switchman, who did not see the carpenter, he again turned on steam. Held, that on this state of facts, the question whether it was the fireman's duty to specifically notify the engineer that a man was in danger was one of fact for the jury.

At Law. Decided May, 1891.

Action by John M. O'Neill against the Chicago & Northwestern Railway Company to recover damages for personal injuries. A verdict having been returned for plaintiff, the case was heard on motion for a new trial. Granted.

This suit was brought by plaintiff to recover damages on account of personal injuries, caused, as alleged, by the negligence of the servants of the defendant. The plaintiff was in the employ of the defendant as a car carpenter, and was directed, in the course of such employment, to repair a car which was standing upon one of the numerous tracks in the defendant's yard at Clinton, Iowa. He was directed to place certain lamp brackets upon said car, and in order to do so it was necessary for him to place a ladder against the car, and to stand on the same while doing the work. While engaged in this duty, standing upon the ladder, a locomotive came in upon the track, and collided with the line of cars upon which plaintiff was at work, with such

force as to throw him to the ground and injure him. The locomotive was in charge of an engineer, and was attended by a fireman, named Riggs, and by a switchman. The fireman, Riggs, saw plaintiff in his perilous position in ample time to inform the engineer of his peril, but gave no notice, and made no effort to stop the engine or prevent the accident, except as shown in the tenth instruction to the jury, hereinafter quoted. The case was tried before a jury, and there was a verdict for plaintiff. The motion for a new trial is urged upon the ground that the court erred in charging the jury. The tenth instruction given to the jury is as follows:

"(10) The evidence tends to show that the fireman, Riggs, who was with the approaching engine, could see plaintiff at work on the car, and that he did see him for some distance, and in ample time to have informed the engineer; that he gave no alarm until the engine was within about one car-length of the standing cars, and that he then called out 'Whoa!' to the engineer, who reversed his engine, and nearly stopped the train, when the switchman, who did not see plaintiff, signaled the engineer to move on, when he again put on steam, and moved up against the standing car, thus causing the injury. If you find these facts, the court instructs you that it was the duty of the fireman to notify the engineer that there was a man on the side on the car and in danger, and to give such notice in time to enable the engineer to avoid the collision; and if so notified, it would have been the duty of the engineer to disregard the signal of the switchman to move on. In such a case he would be bound to presume that the signal had been given in ignorance of the danger, and he would be bound to act upon his knowledge of the danger, or upon any information he had received from the fireman, or from any other source, that there was a man in danger."

Mr. Justice McCREADY delivered the opinion of the Court:

I am inclined to the opinion that the tenth instruction given to the jury was erroneous, in that it did not leave it for the jury to say whether, under the circumstances, it was the duty of the fireman (Riggs) to have given to the engineer more definite and explicit warning concerning the plaintiff's peril. It is doubtful whether the circumstances of this case bring it within the rule that, the facts being established, the court may determine the question of negligence as a question of law. It probably belongs to that other class in which, although the facts be undisputed, different minds might honestly draw different conclusions therefrom; and, if so, the question is for the jury. As the verdict is for less than \$5,000, and therefore a judgment rendered thereon could not be reviewed upon writ of error by the Supreme Court, I am constrained to resolve

my doubts in favor of a new trial. The motion is sustained. Railroad Co. v. McElwee, 67 Pa. St. 315; Railroad Co. v. Stout, 17 Wall. 659; Railroad Co. v. Van Steinburg, 17 Mich. 99; Gillespie v. City of Newburg, 54 N. Y. 468; City of Rockford v. Hildebrand, 61 Ill. 155.

THE COURTS.

Supreme Court of the District of Columbia IN EQUITY.—New Suits.

June 13, 1892.

14001. D. M. Ogden v. Harrietta Parke et al. Com. sols., Ralston & Siddons.
14002. Robert Waldron v. Frank Hannan et al. To enforce mechanics' lien. Com. sol., H. B. Moulton.

June 15.

14003. Jackson Gordon v. Nancy Gordon. For divorce. Com. sol., John A. Moss.
14004. Sarah Tolliver, alleged lunatic. Upon petition of Commissioners, D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazleton.
14005. Elizabeth Speadie, alleged lunatic. Upon petition of Commissioners, D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazleton.
14006. Marie Jenkins, alleged lunatic. Upon petition of Commissioners, D. C. De lunatico inquirendo. Geo. C. Hazleton.
14007. Martha Wilson, alleged lunatic. Upon petition of Commissioners, D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazleton.

June 16.

14008. Alice King v. Geo. R. Williams, administrator, et al. To enforce specific lien on fund. Com. sol., R. Ross Perry.
14009. Hammack & Decker v. Sarah A. Carpenter et al. For specific performance. Com. sols., F. H. Mackey and O. C. Tucker.
14010. J. M. Johnston, administrator d. b. n. c. t. a. of Geo. W. Riggs v. Norman Bestor. To substitute trustee. Com. sol., Calderon Carlisle.

June 17.

14011. Pearl Lloyd v. Edwin H. Lloyd. For divorce. Com. sol., C. A. Walter; Defts. sol., J. G. Bigelow.

June 18.

14012. John H. Walter et al. v. Sigmund Block et al. For specific performance. Com. sol., Jno. Ridout.

14013. Herman Prather, alleged lunatic. Upon petition of Commissioners, D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazleton.

14014. Margaret A. Baldwin, alleged lunatic. Upon petition of Commissioners, D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazleton.

June 20.

14015. Annie Phipps v. Edwin S. Phipps. For divorce. Com. sol., E. B. Hay.

14016. Bertha Martin, administratrix, v. Nathan C. Platt et al. Creditor's bill. Com. sols., D. S. Mackall and H. W. Garnett.

14017. Frederick L. Manson v. C. C. Duncanson. For injunction. Com. sol., C. A. Armes.

June 22.

14018. Eli S. Shively, alleged lunatic.
14019. Carrie C. At Lee, by next friend, Porter F. At Lee v. W. E. Paine et al. To reform deed and to remove cloud from title; part of lot 6, Sq. 525. Com. sol., Geo. Francis Williams.

June 23.

14020. Maria Isdell, alleged lunatic.
14021. Anna Sands v. Ella Hefferman. To assign dower and for receiver. Com. sols., Morris & Hamilton.

14022. Geo. D. Todd v. Cornelius Courtney et al. Com. sols., J. J. Johnson and W. B. Todd.
14023. Wm. Selby v. Jacob Tome et al. To substitute trustee. Com. sol., J. C. Heald.

14024. S. W. Lewis et al. v. W. Moses Smith et al. To sell lot 33, Sq. 517. Com. sol., C. H. Cragin.

14025. Estella A. Miller v. R. A. Hooe. To sell Sq. south of Sq. 153. Com. sol. W. H. Dennis.

June 25.

14026. A. B. Renahan et ux. v. Frank Renahan et al. To confirm contract of sale, sublot 26, Sq. 134. Com. sols., I. Williamson and J. J. Johnstone.

14027. Eliza Ferry v. Francis A. Ferry et al. For partition by sale. Com. sol., A. B. Duvall.

14028. D. M. Ogden et al. v. Harrietta Parke et al. To remove cloud off title. Com. sols., Ralston & Siddons.

14029. J. H. Bradley v. R. A. Casilear. For an accounting. Com. sols., Sheppard & Lavender.

AT LAW—New Suits.

June 10, 1892.

33026. Caroline Bolling et vir. v. The District of Columbia, The Western Union Tel. Co. and The U. S. Electric Lighting Co. Damages, \$25,000. Pliffs. attys., H. W. Garnett and D. S. Mackall.

33027. Browning & Middleton v. The District of Columbia. Damages, \$4,000. Pliffs. attys., Shellabarger & Willson.

33028. John Power, receiver, etc., v. Hernando D. Money. Mississippi judgment, \$8,250.48. Pliffs. atty., Phillips & McKenney.

33029. H. L. Crawford v. Jno. G. Bright et al. Note, \$200. Pliffs. attys., Shellabarger & Willson.

33030. In re the German American National Bank of Washington, D. C. Petition to sell property.

June 11.

33031. Geo. H. Bliss v. Mary E. Guild. Judgment of Justice Strider, \$25.

33032. Washington Brewery Co. v. G. H. Berger. Note, \$134.63. Pliffs. attys., Lipscomb & Woodard.

33033. "Tolman Steam Laundry" v. Thomas J. Murray. Account, \$136.68. Pliffs. atty., W. H. Sholes.

33034. Mary E. O'Connor et al. v. The District of Columbia, The and Treasurer of the United States. Certiorari. Pliffs. atty., T. A. Lambert.

33035. J. A. McGill v. Austin Herr. Note, \$112.80. Pliffs. attys., Carus & Miller.

Legal Notices.**Rule of Court.**

RULE 20. * * * Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

FIRST INSERTION.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

Robert M. Bell
vs.
Elizabeth G. Malone et al. { In Equity. 13,539.

John Ridout, the trustee in this cause, having reported the sale of the east half of lot 14 in square eighty-four (84), in the city of Washington, District of Columbia to Leo Simmons for \$150, it is this 28th day of June, 1892, adjudged and ordered that said sale be and it is hereby finally ratified and confirmed unless cause to the contrary be shown on or before the 28th day of July, 1892.

Provided a copy of this order be published in each of the three issues of the Washington Law Reporter published next after the date of this order.

A. C. BRADLEY, Justice.

A true copy. Test: J. R. Young, Clerk.
26 By M. A. Clancy, Asst. Clerk.
[Filed June 28, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Leo Simmons et al. { In Equity. 13,006.
vs.
L. Wilber Reid et al. { In Equity. 13,006.

John Ridout, the trustee in this cause, having reported the sale on lots five (5) and twenty-two (22) in square numbered ten hundred and seventy-seven (107) in the city of Washington, District of Columbia, to Leo Simmons, for \$300 cash, it is this 25th day of June 1892, adjudged and ordered that said sale be and it is finally ratified unless cause to the contrary be shown on or before the 25th day of July 1892.

Provided a copy of this order be published in the Washington Law Reporter in each of its three successive issues, published next after the date of this order.

A. C. BRADLEY, Justice.

A true copy. Test: J. R. Young, Clerk.
26 By M. A. Clancy, Asst. Clerk.
[Filed June 25, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Louis P. Shoemaker et al. { In Equity. 11,534.
vs.
George A. Tibbets et al. { In Equity. 11,534.

John Ridout, the trustee in this cause, having reported the sale of the real estate described in the bill, being part of the tract of land known as "Slippery Hill" to Louis P. Shoemaker for \$6,000, cash, it is this 28th day of June, 1892, adjudged and ordered that said sale be and it is hereby ratified and confirmed unless cause to the contrary be shown on or before the 28th day of July, 1892.

Provided a copy of this order be published in the Washington Law Reporter in each of the three issues of said paper published next after the date of this order.

A. C. BRADLEY, Justice.

A true copy. Test: J. R. Young, Clerk.
26 By M. A. Clancy, Asst. Clerk.
[Filed June 28, 1892. J. R. Young, Clerk.]

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of AMELIA BUTLER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 22d day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of June, 1892.

CORNELIA BROWN,

26 Formerly known as Cornelia Burke, 1814 11th St., n. w.

Legal Notices.**This is to Give Notice**

That the subscriber, of Chicago, Ill. has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of ROBERT McMURDY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of June, 1892.

ROBERT N. McMURDY,
Care of CHARLES W. NEEDHAM.

Washington Loan and Trust Building, 9th & F St., n. w.

26 Charles W. Needham, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business.

June 20th 1892.

In the case of Lillian L. Dunn, administratrix of CLARA E. LASH, deceased, the administratrix aforesaid has, with the approval of the court, appointed Friday, the 29th day of July, A. D. 1892, at 11 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the administratrix will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
26 No. 4388. Ad. Doc. 16. B. F. Leighton, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business.

June 25, 1892.

In the case of George C. Ober, executor of ANN M. NASH, deceased, the executor aforesaid has, with the approval of the court, appointed Friday, the 29th day of July, A. D. 1892, at 11 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
26 No. 4388. Ad. Doc. 16. J. T. Cull, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
The 24th day of June, 1892.

Matthai Ingram & Co. { No. 32,844. Docket, 37.
vs.
John Conway.

On motion of the plaintiffs, by Mr. Chapin Brown and Frank C. Townsend, their attorneys, it is ordered that the defendant, JOHN CONWAY, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to subject to the satisfaction of the plaintiff's claim, certain credits of the defendant attached herein.

By the Court. A. C. BRADLEY, Justice, &c.
26 True copy. Test: J. R. Young, Clerk, &c.

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of MARY ELEANOR RUTH, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of June, 1892.

AMERICAN SECURITY AND TRUST CO.,
By PERCY B. METZGER,

26 Percy B. Metzger, Trust Officer.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,**
Holding a Special Term for Orphans' Court Business,
This 24th of June, 1892.

In re estate of REBECCA S. GILLISS, late of the District of Columbia. No. 5063. Admin. Doc. 18.

Application having been made for the probate of a paper-writing propounded as the last will and testament, and for letters testamentary on the estate of said Rebecca S. Gilliss, deceased, by James Gilliss:

Notice is hereby given to all concerned to appear in this court on Friday, July 22, 1892, at one o'clock p. m., to show cause, if any exist, against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter and Evening Star once in each of three successive weeks before said day.

By the Court: A. C. BRADLEY, Justice.
A true copy. Teste: L. P. WRIGHT, Reg. of Wills, D. C.
26 Morris & Hamilton, Proctors for applicant.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

William R. Shaw } vs. { In Equity. No. 13,472.
Thomas M. Cassell et al.

Upon consideration of the report of Andrew A. Lipscomb and Frank T. Browning, trustees in the above entitled cause, that they have sold to Thomas J. West the premises in the said cause involved, to wit; lot S. 44 in square No. 207 and improvements, in the City of Washington and District of Columbia, at the sum of \$3500.00, it is, this 28th day of June, A. D. 1892, adjudged, ordered and decreed that the sale be and same hereby is ratified and confirmed unless cause to the contrary be shown to the court on or before the 28th day of July A. D. 1892.

Provided a copy of this order be published in the Washington Law Reporter once a week for three (3) successive weeks prior to said last mentioned date.

A. C. BRADLEY, Justice.
A true copy. Test: J. R. Young, Clerk.
By M. A. Clancy, Asst. Clerk.

[Filed June 28, 1892. J. R. Young, Clerk.]
26 A. A. Lipscomb and Henry F. Woodard, Solicitors for complainants.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

Abraham Depue, et al. } vs. { No. 13,718. Equity.
John H. Bridwell, et al.

The trustees herein, Job Barnard, Andrew A. Lipscomb and John Ridout, having reported sales of all the real estate described in the bill in this cause, for the aggregate sum of \$26,924. 26, it is this 28th day of June, 1892, ordered, that the said sales be finally confirmed unless cause to the contrary shall be shown on or before the 28th day of July 1892.

Provided a copy of this order be published for three successive weeks before that date in the Washington Law Reporter.

A. C. BRADLEY, Justice.
A true copy. Test: J. R. Young, Clerk,
26 By M. A. Clancy, Asst. Clerk.

SECOND INSERTION.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,**
The 21st day of June, 1892.

Minnie A. Haughton } vs. { No. 13,950. Eq. Docket 33.
Reginald Haughton.

On motion of the plaintiff, by Mr. Neill Dumont, her solicitor, it is ordered that the defendant, REGINALD HAUGHTON cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is divorce of plaintiff from the bond of matrimony with the defendant.

Provided that a copy of this order be published once a week for three weeks prior to said day in the Evening Star and in the Washington Law Reporter.

By the Court: A. C. BRADLEY, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
25 By M. A. Clancy, Asst. Clerk.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,**
The 20th day of June, 1892.
Henry Wise Garnett and Samuel P. Bell, Executors, Complainants
vs. Hannah M. Bartlett et al., Defendants.
No. 13,858. Equity Docket 38.

On motion of the complainants, by Mr. Hagner, their solicitor, it is ordered that the defendants, GEORGE HOLMES, Junior, and ALEXANDER VANCE HOLMES, formerly of Brooklyn, N. Y., cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to construe the will of the late Anna M. Cochran Smith and of the supplemental will filed by leave of the court, is to entirely settle the estate of said Anna M. C. Smith—and in case the legacies cannot be paid to said Alexander Vance Holmes and George Holmes, Junior, because of their not being found, then that the same may be paid into court—or to the said Hannah M. Bartlett as residuary legatee—as shall seem proper to the court.

By the court: A. C. BRADLEY, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
25 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 15th day of June, 1892.

Rebecca Weigmann } vs. { No. 13,884. Equity Docket 32.
John L. Weigmann.

On motion of the plaintiff by Mr. J. J. Johnson, her solicitor, it is ordered that the defendant, JOHN L. WEIGMANN, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce a vinculo matrimonii for desertion and abondonment by the defendant.

Provided said order be published once a week for three weeks prior to said day in the Washington Law Reporter.

By the Court: A. C. BRADLEY, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
25 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Wm. L. Draper } vs. { No. 13,515.
Charles H. Warren et al.

The above entitled cause coming on to be heard on motion of defendants to approve the report of receivers filed in this cause on the 6th day of June, 1892, and ratify the sale therein reported, it is this 18th day of June, 1892, ordered, adjudged and decreed that said sale be and the same is hereby ratified and confirmed unless cause to the contrary is shown on or before the 18th day of July, 1892.

Provided that a copy of this order be published in the Washington Law Reporter once a week for three weeks prior to said day.

A. C. BRADLEY, Justice.
A true copy. Test: J. R. Young, Clerk.
25 By M. A. Clancy, Asst. Clerk.
[Filed June 18, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

James G. Craighead } vs. { No. 13,890.
Catherine M. Kennedy et al.

On motion of the plaintiff, by Ralston & Siddons, his solicitors, and it appearing that the following named defendants are non-residents and that subpoenas against them have been returned "not to be found" it is this 15th day of June, A. D. 1892, ordered that the defendants, ANNIE E. BIDWELL, JOHN BIDWELL, GUY R. KENNEDY, JOSEPH J. KENNEDY and CORA W. KENNEDY, cause their appearance to be entered herein on or before the first rule-day occurring forty (40) days after this day, otherwise the cause will be proceeded with as in cause of default.

The object of this suit is to obtain a substituted trustee in place of Joseph C. G. Kennedy, deceased, trustee in trust, recorded in Liber 1170, folio 197 et seq., of the District of Columbia Land Records.

A. C. BRADLEY, Justice.
A true copy. Test: J. R. Young, Clerk.
25 By M. A. Clancy, Asst. Clerk.
[Filed June 15, 1892. J. R. Young, Clerk.]

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**
The 18th day of June, 1892.

Lizzie Ellsworth } vs. No. 18,878. Equity Docket 38.

William E. Ellsworth. On motion of the plaintiff by W. C. Martin, her solicitor, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to dissolve the marital relations existing between the parties hereto.

The ground for dissolution of said martial relations is willful desertion and abandonment.

By the Court. A. C. BRADLEY, Justice, &c.
True copy. Test: J. R. Young, Clerk,
25 By L. P. Williams, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
The 20th day of June, 1892.

Joseph F. Courtney, Complainant } vs. No. 18,467. Eq. Doc. No. 32.
Honora Finn and others, Defendants.

On motion of the plaintiff by Mr. Eugene F. Arnold, his solicitor, it is ordered that the defendant, JAMES M. COURTNEY, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the court will be proceeded with as in case of default.

The object of this suit is the construction of a deed, substitution of a trustee, and an account from the defendant, Honora Finn.

By the Court. A. C. BRADLEY, Justice, &c.
True copy. Test: J. R. Young, Clerk.
25 By M. A. Clancy, Asst. Clerk.

[Filed June 20, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
The 18th day of June, 1892.

Anna W. Hofner, Complainant, } vs. No. 13,942. Docket 33.
Gustav Paul Hofner, Defendant.

On motion of the plaintiff by Messrs. Sheppard & Lavender, her solicitors, it is ordered that the defendant, GUSTAV PAUL HOFNER cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain an absolute divorce for willful desertion and abandonment for the full and uninterrupted space of two years before filing this bill.

Provided a copy of this order be published in the Washington Law Reporter once a week for each of three successive weeks before said rule-day, and in The Evening Star, also.

By the Court. A. C. BRADLEY, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
25 By L. P. Williams, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Mary Ann Sanford et al., Complainants, } vs. In Equity. No. 18,633.
Christiana V. N. Callan et al., Defendants.

On motion of the plaintiffs, by P. E. Dye, their attorney, it is by the court this 23d day of June, 1892, ordered that the defendant, HENRY F. CALLAN, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to have a trustee appointed in place of Nicholas Callan, deceased, who was appointed and substituted by the court, trustee, in place of Notley Young, deceased, (said Young having been appointed trustee under a deed dated February 23, 1828, and found recorded in Liber W. B. No. 20, folio 490, of the land records of the District of Columbia), to make a conveyance of certain land, said Nicholas Callan having made error in the description of certain lands intended to have been conveyed to James E. Morgan by deed dated March 22, 1850, and found recorded in Liber J. A. S. No. 12, folio 221 et seq. land records of the District of Columbia.

The bill asks for the appointment of a trustee to make correction of the error inadvertently made by Callan in a deed.

A. C. BRADLEY, Justice.
A true copy. Test: J. R. Young, Clerk.
25 By M. A. Clancy, Asst. Clerk.
Filed June 23, 1892: J. R. Young, Clerk.

Legal Notices**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**
The 9th day of June, 1892.

E. L. Parker & Co. } vs. No. 32,902. Law.
John Conway.

On motion of the plaintiffs, by Mr. Clarence A. Brandenburg, their attorney, it is ordered that the defendant, JOHN CONWAY, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to subject to the satisfaction of plaintiff's claim certain credits of the defendant attached herein.

By the Court: M. V. MONTGOMERY, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
25 By H. W. Hodges, Asst. Clerk.

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of PATRICE de JANON, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 18th day of April, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of April, 1892.
FERDINAND de JANON,
1519 K Street.

25 West Steever, Proctor.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of ANNA L. BOICE, late of the District of the Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 18th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of June 1892.
WASHINGTON LOAN & TRUST CO.,
ANDREW PARKER, Asst. Secy.

25 John B. Larner, Proctor.

This is to Give Notice

That the subscriber of District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of testamentary on the personal estate of JOHN F. GUY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of June, 1892.
25 Chas. Bendheim, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business.

June 17th, 1892.

In the case of ORVILLE H. PLATT, administrator, c. t. a., of JEDDEIDIAH H. BAXTER, deceased, the administrator c. t. a. aforesaid has, with the approval of the court, appointed Friday, the 22d day of July, A. D. 1892, at 11 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributives shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the administrator c. t. a. will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Washington Post previous to the said day.

Test: L. P. WRIGHT,
25 Register of Wills for the District of Columbia.
J. M. Vale, Proctor.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,**
Holding a Special Term for Orphans' Court Business.

This 17th day of June, 1892.

In re estate of GEORGE WHITEFIELD TAYLOR, late of the District of Columbia. No. 5057. Admin. Doc. 18.

Application having been made for letters of administration on the estate of said George Whitefield Taylor, deceased, by Henry D. Cochran:

Notice is hereby given to all concerned to appear in this court on July 15th, 1892, at one o'clock p. m., to show cause if any exist against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter once a week in each of three consecutive weeks before said day.

By the Court.

A. C. BRADLEY, Justice.

A true copy. Test: L. P. WRIGHT, Reg. of Wills, D. C.
25 Sam. Maddox, Proctor for applicant.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

The 15th day of June, 1892.

Thos. W. Smith

vs. } No. 13,947. Eq. Docket 83.
Arthur E. Randle et al.

On motion of the plaintiff, by Mr. S. T. Thomas, his solicitor, it is ordered that the defendants, ARTHUR E. RANDLE, WILLIAM R. MARTIN and W. E. D. STOKES, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to enforce a mechanic's lien against that part of a tract of land in the District of Columbia, formerly called "Kosciusko Place" bought by the defendant A. E. Randle from J. J. Knox, and not included, by the said Randle, in his subdivision called "Congress Heights" for the payment and satisfaction of \$1,200, with interest from December 1, 1890, besides costs, in respect to building materials supplied by the plaintiff to said Randle and used by him in repairing the old dwelling on said premises.

By the Court.

A. C. BRADLEY, Justice, &c.

True copy. Test: J. R. Young, Clerk, &c.
25 By M. A. Clancy, Asst. Clerk.**This is to Give Notice**

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court Business, letters testamentary on the personal estate of BENJAMIN F. WILKINS, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of June, 1892.
25 ANNA W. WILKINS,
923 23d St. n. w.

H. Baird Stimpson, Proctor.

THIRD INSERTION.**This is to Give Notice**

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of ELIZABETH BITNER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 3d day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 3d day of June, 1892.
24 ROBERT BOYD,
416 9th St. n. w.**This is to Give Notice**

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding special terms for Orphans' Court business, letters testamentary on the personal estate of JAMES MALONEY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of June, 1892.
24 J. Carter Marbury, Proctor.L. W. SNOOK,
117 2d St., n. w.**Legal Notices.****This is to Give Notice**

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of JAMES W. ST. CLAIR, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day of June, 1892.

Z. S. BUCKLER,
24 B. F. Leighton, Proctor.
911 O St., n. w.**This is to Give Notice**

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of STEPHEN CASEY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of May, 1892.

J. WILLIAM LEE,
24 George E. Johnson, Proctor.
332 Pa. Ave., n. w.**This is to Give Notice**

That the subscribers of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of MARY BRENT MOSHER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 3d day of June, 1892.

JAMES MOSHER,
ALEXANDER MOSHER,
24 Conway Robinson, Jr., Proctor.
1006 F St., n. w.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of ANN COTTRINGER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of May, 1892.

ELEANOR B. GOODFELLOW,
24 1449 Corcoran St., Washington, D. C.**This is to Give Notice**

That the subscribers of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of ROBERTA J. POTTS late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 22d day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 22d day of April, 1892.

TATTNALL FAULDING,
EDW. S. HARLAN.
24 Mills Dean, Proctor.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration c. t. a. on the personal estate of JANE W. MICHEL, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day of June, 1892.

SUE M. TALIAFERRO,
24 J. Thomas Sothoron, Proctor.
2002 12 St., n. w.

Legal Notices.**This is to Give Notice**

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of MARY A. THOMAS, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 31st day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 31st day of May, 1892.
CHARLES H. CRAGIN.
JOHN B. THOMAS.

24 Chas. H. Cragin, Proctor.

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of LEWIS JAMESON, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of June, 1892.
CATHARINE C. JAMISON.

24 Frank W. Hackett, Proctor. 2514 14 St., n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
The 10th day of June, 1892.

FANNIE P. WILLIAMS, MARY H. BELL, ROBERT RANSOM, JR., JAMES J. B. RANSOM, MATT W. McCORKLE, HENRY H. RANSOM, GEORGE G. RANSOM AND SEYMORE H. RANSOM vs. JOHN W. PAINE.

At Law. No. 32,845. Docket 37.

On motion of the plaintiff, by Mr. Franklin H. Mackey, their attorney, it is ordered that the defendant, JOHN W. PAINE, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to recover a one-sixth undivided interest in square fifty-three (53) of the city of Washington, District of Columbia.

By the Court. M. V. MONTGOMERY, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
By R. Willett, Asst. Clerk.

[Filed June 10, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
This 10th day of June, 1892.

Jno. C. Wright, Plaintiff, vs. { Equity. No. 13,883.

Mary A. Wright, Defendant.

On motion of the plaintiff, by Mr. A. C. MacNulty, his solicitor, it is ordered that the defendant cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day.

Provided that a copy of this order be published once a week for three weeks before that day in the Washington Law Reporter and Evening Star. The object of this suit is a divorce from the bond of marriage on the ground of desertion.

A. C. BRADLEY, Justice.
A true copy. Test: J. R. Young, Clerk.
By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Isaac Braxton, Jr., et al. vs. { No. 12,144. Equity Doc. 30.

Nathaniel Braxton et al. vs. { No. 12,144. Equity Doc. 30.

Ferdinand Schmidt and Benjamin F. Leighton, trustees in above entitled cause, having reported a sale of the lot and premises therein described, to wit, the east one-half ($\frac{1}{2}$) of lot numbered eleven (11) in block numbered seven (7) of the Howard University subdivision of the farm of John A. Smith, commonly known as Eflingham, unto one Furman J. Shadd, for the sum of fifteen hundred (1500) dollars, it is this 15th day of June, A. D. 1892, ordered, adjudged and decreed, that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 15th day of July, A. D. 1892.

Provided a copy of this decree be published in the Washington Law Reporter once a week for three successive weeks before that day.

By the Court. A. C. BRADLEY, Justice.
A true copy. Test: J. R. Young, Clerk.
By M. A. Clancy, Asst. Clerk.

24

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

The 13th day of June, A. D. 1892.

Edward Campbell } vs. { No. 13,963. Equity Docket, 33.
Abbie M. Campbell. }

On motion of the complainant, by J. J. Wilmarth, his solicitor, it is ordered that the defendant, ABBIE M. CAMPBELL, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for absolute divorce upon the grounds of willful desertion and abandonment for the uninterrupted period of more than two years.

Provided that a copy of this order be published once a week for three weeks prior to said day in the Washington Law Reporter.

A. C. BRADLEY, Justice.
J. R. Young, Clerk, &c.
By M. A. Clancy, Asst. Clerk.
[Filed June 13, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

William R. Shaw } vs. { Equity, No. 13,473.
Thomas M. Cassell et al. }

This cause coming on to be heard on the report of the trustees filed herein, it this 10th day of June, A. D. 1892, ordered that the sale of lot fourteen (14) in block eight (8) in A. L. Barbour's subdivision of Le Droit Park in the District of Columbia, made by the trustees herein and reported to them by this court, be and the same is hereby finally ratified and confirmed, unless cause to the contrary be shown on or before the 11th day of July, 1892; and it is further ordered that the purchasers of said lot of ground be and they are hereby allowed to assume the amount of the incumbrance due on said property, at the time of said sale and that the same be deducted from the purchase price of the same.

A. C. BRADLEY, Asso. Justice.
True Copy. Test: J. R. Young, Clerk, &c.
By M. A. Clancy, Asst. Clerk.
[Filed June 10, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

Elizabeth A. Cooper et al. } vs. { No. 12,714. Equity Doc. 31.
Norman L. Cooper et al. }

Charles H. Cragin, the trustee appointed by decree in this cause to sell certain real estate therein described (being part of lot 13, square 298) having reported the private offer of H. Lloyd Irvine to purchase the north 20 feet 2 inches front by depth of said lot, (67 feet 3 inches) next to the north 10 inches front the reof, for the sum of eleven thousand one hundred and fifty-five (\$11,155) dollars, it is by the court, this 11th day of June, 1892, ordered that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 11th day of July next.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to said last mentioned date.

A. B. HAGNER, Justice.
A true copy. Test: J. R. Young, Clerk.
By M. A. Clancy, Asst. Clerk.
[Filed June 11, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Horton C. Ryan } vs. { No. 13,740. Equity.
Gertrude A. Ryan et al. }

Job Barnard, the trustee herein, having reported a sale of lots numbered thirty-five (35) and thirty-six (36) of R. H. Ryan's subdivision of original lot numbered nineteen (19) in square numbered six hundred and ninety-three (693), in Washington City, D. C., for the sum of twenty-nine hundred and sixty dollars (\$2,960).

It is this 9th day of June, 1892, ordered that the said sales be confirmed unless cause to the contrary be shown on or before the 9th day of July, 1892.

Provided a copy of this order be published for three successive weeks in the Washington Law Reporter before the said last mentioned date.

A. B. HAGNER, Justice.
A true copy. Test: J. R. Young, Clerk.
By M. A. Clancy, Asst. Clerk.

24

Legal Notices.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court Business, letters of administration on the personal estate of JAMES M. RICHARDS, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of June, 1892.

MARGARET G. RICHARDS,
24 E. M. Spalding, Proctor.
984 Fla. Ave., n. w.

This is to Give Notice

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court Business, letters testamentary on the personal estate of CYRUS K. FOSS, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 31st day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 31st day of May, 1892.

BENJ. F. LEIGHTON.
LENE M. FOSS.
24 B. F. Leighton, Proctor.
482 La. Ave., n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business.

June 9, 1892.

In the case of Christina C. Coleman, administratrix of SARA A. RICHARD, deceased, the administratrix aforesaid has, with the approval of the court, appointed Friday, the 8th day of July, A. D. 1892, at 1 o'clock p. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the administratrix will take the benefit of the law against them: Provided, a copy of this order be published once a week for three weeks in the "Washington Law Reporter" previous to the said day.

Test: L. P. Wright,
Register of Wills for the District of Columbia.
24 No. 4467. J. J. Wilmarth, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The eleventh day of June, 1892.

Mamie E. Norment
vs.
Clarence F. Norment et al. } No. 13,889. Equity Docket 33.

On motion of the plaintiff, by Mr. Thomas P. Woodward, her solicitor, it is ordered that the defendant, BENJAMIN F. M. HURLEY, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to declare a trust as to the property mentioned in the bill of complaint, for an account, an injunction, and a receiver.

This notice to be published in the Washington Law Reporter and The Evening Star.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Teste: J. R. Young, Clerk, &c.
24 By L. P. Williams, Asst. Clerk.

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of GEORGIANA GOUGH, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of June, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of June, 1892.

MAYHEW PLATER,
24 C. M. & H. S. Matthews, Proctors.
3106 N street.

Legal Notices.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, letters testamentary on the personal estate of WILLIAM KICKHAM, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of June, 1892.

M. J. ADLER,
24 C. M. & H. S. Matthews, Proctors.
3148 M St.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphan's Court business, letters testamentary on the personal estate of SPENCER A. COE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 11th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 11th day of June, 1892.

THOMAS I. GARDNER,
24 1518 S St., n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of GEORGE THWAITES, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 11th day of June, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 11th day of June, 1892.

THE WASHINGTON LOAN AND TRUST CO.,
24 John B. Larner Proctor. By Andrew Parker, Asst. Sec.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

Holding a Special Term for Orphans' Court Business,

This 10th of June, 1892.

In re estate of MARIA BARCROFT, late of the District of Columbia, deceased. No. 5047. Administration Doc. 18.

Application having been made for letters of administration on the estate of said Maria Barcroft, deceased, by John G. Lee, one of the next of kin who prays that such letters may be issued to Chapin Brown of Washington, D. C.

Notice is hereby given to all concerned to appear in this court on July 8, 1892, at one o'clock p. m., to show cause if any exist against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter, once in each of three successive weeks before said day.

By the Court: A. C. BRADLEY, Justice.
A true copy. Teste: L. P. WRIGHT, Reg. of Wills, D. C.
24 Chapin Brown, Proctor for applicant

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

Holding a Special Term for Orphans' Court Business.

This 10th of June, 1892.

In re estate of JOHN A. RICKETTS, late of the District of Columbia. No. 5048. Administration Doc. 18.

Application having been made for letters of administration on the estate of said John A. Ricketts, deceased, by Emeline Ricketts, the widow, who prays that such letters may be granted to James H. Fowler, of Washington, D. C.

Notice is hereby given to all concerned to appear in this court on Friday July 8th, 1892, at one o'clock p. m., to show cause if any exist against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter once in each of three successive weeks before said day.

By the Court: A. C. BRADLEY, Justice.
A true copy. Teste: L. P. WRIGHT, Reg. of Wills, D. C.
24 J. Thos. Sothonon, Proctor for applicant.

The Washington Law Reporter.

ESTABLISHED 1874.

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[WEEKLY]

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ERASTUS THATCHER, EDITOR.

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WASHINGTON, D. C., - - - JULY 7, 1892

Supreme Court of the United States.

ARTEMUS ROBERTS, PLAINTIFF IN ERROR,

v.

WALTER F. LEWIS.

1. Since 1872, when Congress assimilated the rules of pleading, practice, and forms and modes of procedure in actions at law in the courts of the United States to those prevailing in the courts of the several states, all defenses are open to a defendant in the Circuit Court of the United States, under any form of plea, answer or demurrer which would have been open to him under like pleading in the courts of the State within which the Circuit Court is held.
2. Under the Nebraska Code of Civil Procedure, the answer takes the place of all pleas at common law, whether general or special, ~~in abatement~~ or to the merits; and a positive denial in the answer of "each and every allegation in the petition," puts in issue every material allegation therein, as fully as if it had been specifically and separately denied.
3. The necessary consequence is that the allegation of the citizenship of the parties, being a material allegation properly made in the petition, was put in issue by the answer, and, like other affirmative and material allegations made by the plaintiff and denied by the defendant, must be proved by the plaintiff.

Decided April 25, 1892.

IN ERROR to the Circuit Court of the United States for the District of Nebraska.

In this action brought June 11, 1887, by Lewis against Roberts in the Circuit Court of the United States for the District of Nebraska, the petition was as follows :

"Comes now the said plaintiff and shows and represents unto this honorable court that he is a resident of the city of Milwaukee in the State of Wisconsin, and a citizen of the said State of Wisconsin, and that the defendant is a resident of the city of Lincoln in the State of Nebraska, and a citizen of the said State of Nebraska, and that the matters and things herein in controversy exceed the sum and value of two thousand dollars, exclusive of interest and costs.

"2d. The plaintiff further complains of the defendant, for that plaintiff has a legal estate in and is entitled to the immediate possession of the following described property, to wit ; lots number one, two, three, four, five and six, all in block number forty-one, in Dawson's addition to South Lincoln, in Lancaster County, Nebraska, and that said defendant has ever since the 11th day of April, 1887, unlawfully kept and still keeps the plaintiff out of possession thereof.

"Wherefore the plaintiff prays that he may have judgment for the delivery of the possession of said premises to him, and for the costs of this action."

The defendant filed the following amended answer :

"1. The above named defendant, for an amended answer to the plaintiff's petition, says that for more than ten years prior to the commencement of this action he had been and still is in the open, adverse possession of the premises in controversy.

"2. Defendant, further answering, denies each and every allegation in said petition contained."

The parties stipulated in writing that the value of the premises in controversy exceeded \$5000 ; and the case was tried by a jury, who by direction of the court, returned a special verdict finding the following facts :

Jacob Dawson died seized in fee of the premises, leaving a widow and five children ; and by his last will, dated May 10, 1869, and duly admitted to probate in Lancaster County, Nebraska, made the following devise and bequest : "To my beloved wife, Editha J. Dawson, I give and bequeath all my estate, real and personal, of which I may die seized, the same to be and remain hers, with full power, rights and authority to dispose of the same as to her shall seem meet and proper so long as she shall remain my widow, upon the express condition, however, that if she should marry again, then it is my will that all of the estate herein bequeathed, or whatever may remain, shall go to my surviving children, share and share alike." On December 14, 1879, Editha J. Dawson married Henry M. Pickering. The premises were conveyed on March 15, 1870, by warranty deed by Editha J. Dawson, to one England, and by him on December 15, 1871, to the defendant, who has ever since been in the peaceful occupation and control of the same. The premises were conveyed on September 15, 1879, by warranty deed by Jacob Dawson's children to Wheeler and Burr, by them on April 27, 1880, to Ezekiel Giles, and by him in May, 1887, to the plaintiff.

The jury found that, if the court should be of opinion that under the will Editha J. Dawson took only an estate determinable upon her marriage, then the plaintiff at the commencement of the action was seized in fee of the premises, and entitled to the immediate possession thereof, and should recover of the defendant nominal damages; but if the court should be of opinion that under the will Editha J. Dawson took an estate absolutely in fee, then they found for the defendant.

The Circuit Court gave judgment for the plaintiff upon the special verdict; and the defendant sued out this writ of error.

Mr. Justice GRAY, after stating the case as above, delivered the opinion of the Court:

The principal question argued in this case is upon the true construction of the devise of Jacob Dawson to his wife, in view of the conflicting decisions of this court and of the Supreme Court of Nebraska. Giles v. Little, 104 U. S., 291; Little v. Giles, 25 Nebraska, 313. See also Little v. Giles, 118 U. S., 596; Giles v. Little, 134 U. S., 645.

But a preliminary question to be decided is whether the Circuit Court of the United States appears upon this record to have had any jurisdiction of the case.

The petition or declaration alleges in due form that the plaintiff is a citizen of the State of Wisconsin, and the defendant is a citizen of the State of Nebraska; and further alleges that the plaintiff has a legal estate in and is entitled to the immediate possession of certain lots in Lancaster County in the State of Nebraska, and the defendant has kept and still keeps the plaintiff out of possession thereof; wherefore the plaintiff prays for judgment for delivery of possession of the premises to him. The answer sets up two defenses: 1st. Open and adverse possession of the premises by the defendant for ten years: 2d. A general denial of each and every allegation in the petition. The special verdict finds facts bearing on the merits of the case, but nothing as to the citizenship of the parties.

Whenever the jurisdiction of the Circuit Court of the United States depends upon the citizenship of the parties, it has been held from the beginning that the requisite citizenship should be alleged by the plaintiff, and must appear of record; and that when it does not so appear, this court, on writ of error, must reverse the judgment, for want of jurisdiction in the Circuit Court. Brown v. Keene, 8 Pet., 112; Continental Ins. Co. v. Rhoads, 119 U. S., 237.

Doubtless, so long as the rules of pleading in the courts of the United States remained as at common law, the requisite citizenship of the parties, if duly alleged or apparent in the declaration, could not be denied by the defendant, except by plea in abatement, and was admitted by pleading to the merits of the action. Shepard v. Graves, 14 How., 505.

But since 1872, when Congress assimilated the rules of pleading, practice, and forms and modes of procedure in actions at law in the courts of the United States to those prevailing in the courts of the several States, all defenses are open to a defendant in the Circuit Court of the United States, under any form of plea, answer or demurrer, which would have been open to him under like pleading in the courts of the State within which the Circuit Court is held. Act of June 1, 1872, Ch. 255 Sec., 5; 17 Stat., 197; Rev. Stat. Sec., 914; Chemung Canal Bank v. Lowery, 93 U. S., 72; Glenn v. Sumner, 132 U. S., 152; Central Transportation Co. v. Pullman's Car Co., 139 U. S., 24, 39, 40.

By the Nebraska Code of Civil Procedure, Sec., 62, every civil action is commenced by petition; and by Sec. 92, the petition must contain "the name of the court and county in which the action is brought, and the names of the parties, plaintiff and defendant," "a statement of the facts constituting the cause of action," and "a demand of the relief to which the party supposes himself entitled." By Sec. 94, the defendant may demur to the petition for certain matters appearing on its face, among which are "that the court has no jurisdiction of the person of the defendant, or the subject of the action," and "that the petition does not state facts sufficient to constitute a cause of action;" and by Sec. 95, the demurrer must specify the grounds of objection, or else be regarded as limited to the latter ground only. By Sec. 96, "when any of the defects enumerated in Sec. 94 do not appear upon the face of the petition, the objection may be taken by answer; and in every case, by Sec. 99, the answer must contain "a general or specific denial of each material allegation of the petition controverted by the defendant," and "a statement of any new matter constituting a defense."

Under this code, as under the code of New York, upon which it was modeled, the answer takes the place of all pleas at common law, whether general or special, in abatement or to the merits; and a positive denial in the answer of "each and every allegation in the petition" puts in issue every material allegation therein

as fully as if it had been specifically and separately denied. *Sweet v. Tuttle*, 14 N. Y., 465; *Gardner v. Clark*, 21 N. Y., 300; *Donovan v. Fowler*, 17 Nebraska, 247; *Hassett v. Curtis*, 20 Nebraska, 162; Maxwell's Practice (4th Ed.), 127, 128; *Bliss on Code Pleading* (2d Ed.), Sec. 345. And by the express terms of Secs. 94, 96, above cited, an objection that the court has no jurisdiction, either of the person of the defendant, or of the subject of the action, may be taken by demurrer, if it appears on the face of the petition, and by answer if it does not so appear.

The necessary consequence is that the allegation of the citizenship of the parties, being a material allegation properly made in the petition, was put in issue by the answer, and, like other affirmative and material allegations made by the plaintiff and denied by the defendant, must be proved by the plaintiff. The record showing no proof or finding upon this essential point, on which the jurisdiction of the Circuit Court depended, the judgment must be reversed, with costs, for want of jurisdiction in the Circuit Court, and the case remanded to that court, which may, in its discretion, either dismiss the action for want of jurisdiction, or set aside the verdict and permit the plaintiff to offer evidence of the citizenship of the parties. *Continental Ins. Co. v. Rhoads*, 119 U. S. 237.

Judgment reversed, and case remanded to the Circuit Court for further proceedings in accordance with the opinion of this court.

Court of Appeals of Maryland.

COVINGTON D. BARNITZ, ADMR., ETC.,

v.

PATRICK REDDINGTON.

Decided June 8, 1892.

Argued before all except Chief Justice ALVEY.

APPEAL from the Orphans' Court of Baltimore City.

Mr. Justice IRVING delivered the opinion of the Court:

The appellant, as administrator of Noah Butler and George Butler, by virtue of an order of the Orphans' Court of Baltimore City, offered for sale the interests of his two intestates in certain property described as leasehold property, subject to the payment of one cent ground rent if demanded. The interest of each of his dece-
dents was described as one-third interest each, as tenants in common in a certain lot of ground on Harford avenue and Hoffman street, Baltimore, which is described by course and dis-

tance. The sale was reported to the court as having been made to one Patrick Reddington for \$633.33½ cents for each interest.

The purchaser excepted in writing to the ratification of the sale, assigning several reasons for his objections; but upon only one has he relied in this court, the others being abandoned. The reason pressed is, that the "property was sold subject to the yearly rent of one cent, whereas said property is subject to other and greater current rents." This exception was sustained by the Orphan's Court, and the sale was set aside. From that decision this appeal was taken.

Much of the record evidence which was before the Orphans' Court and upon which their decision was based is not to be found in the record sent to us; and but for the admission and concessions of fact found in the briefs of counsel we would be wholly unable to review the action of the court, and would be compelled simply to affirm for want of sufficient information to satisfy us that there was error. From what is to be found in the record supplemented by the admission of counsel, we think it reasonably clear that the sale ought to have been disapproved and set aside, as was done by the Orphans' Court. It is admitted, that Edward Hanson, being the owner of the fee, leased the property of which the lot sold by the appellant is a part to one Simon Guinn, in 1793, for ninety-nine years, renewable forever, reserving a yearly rent of two pounds and fourteen shillings. In the same year Guinn sublet to William Price the lot now in question.

On both sides it is conceded that by *meane* conveyances the title of Wm. Price finally became vested in the appellant's intestates, and their sister, Elenora Aikens, whose interest the appellant as her attorney sold at the same time that he sold the interests of his intestates, in order that the purchaser might acquire the title to the whole property, which it was claimed was held, as undivided property, in equal shares, by Noah and George Butler and Elenora Aikens.

When the conveyance was made by Guinn to Price there was a reservation of one pound and four shillings annual rent, and no more. It is admitted that none of the conveyances of this lot mentioned any rent resting upon it or issuing out of it except the one pound four shillings which was reserved in the conveyance from Guinn to Price in 1793. As there is not only no evidence of any other rent except this one pound four shillings reserved in Guinn's deed to Price, but there is some proof that for more than fifty years no other rent has been exacted, it is reasonable to conclude, as the Chancellor did in

Speed v. Smith, 4 Md. Ch., 231 (Brantley's edition) that this lot was not liable for any other rent; and that there had been an apportionment of the rent resting upon the original lot, and that this lot, which was only about one-fifth of the original lot, was allotted to pay a large share of the original rent; that which was put upon it being nearly one-half of the whole original rent.

To this extent therefore we disagree with the Orphans' Court; although that will make no difference in the result. We do not think, under the facts, that this lot was subject to any greater rent than that it was sold subject to. For another reason we think the Orphans' Court was right in their determination of the case.

Both sides admit that in 1804 Leynch conveyed this lot to McAlister. As Leynch had only a leasehold interest to sell, we may suppose and presume he did not attempt to convey a larger estate than he actually owned. That conveyance is not in the record, but the admission of parties through their counsel, upon which thus far we have proceeded, does not give Leynch or claim for him a larger estate than a leasehold. That estate he conveyed to McAlister; and in 1856 McAlister conveyed it to Ann Butler, mother of the appellant's intestate and Mrs. Aikens. This deed of McAlister to Ann Butler is in the record, and on its face it is a conveyance in fee.

That deed was not recorded within six months, which the Act of 1856, Ch. 154, required to be done to give it validity. It was nearly seven months before it was recorded, and under the provisions of the Act of 1856 that deed could not operate, even between the parties, as a title paper. But by the Act of 1860, Ch. 133, which became section 19 of article 21 of the Code of 1860, and is now section 19 of article 21 of the Code of 1888, the non-record of the deed within six months was cured, subject to the rights of certain creditors and purchasers without notice, which qualification, for obvious reasons, does not affect this case. *Brydon v. Campbell*, 40 Md., 331. Had appellant's intestates and Mrs. Aikens stood on that deed of McAlister to their mother and continued to claim a fee under it, having color of title to back them up, they might, after the lapse of twenty years, have acquired an unimpeachable title by adverse possession; but they did not do so. Distrusting their title, and perhaps supposing it void (though we are not informed why), they repudiated that title before it had ripened into a title by adverse possession, and procured a deed to them and Mrs. Aikens from McAlister,

their mother's grantor, in 1875, for the same property, in which it was described as leasehold property.

Inasmuch as McAlister had conveyed to Ann Butler all the title he had, of whatever sort that was, she took discharged of the rent of one pound four shillings.

Having by his deed to Ann Butler divested himself of all his interest in the property, McAlister's deed to appellant's intestates and Elenora Aikens was inoperative to give anything to them. His deed to Ann Butler, which when first recorded, did not operate as a title paper because it was not recorded within six months, became inoperative by virtue of the curing Act of 1860, Ch. 133.

The appellant's intestates, and Elenora Aikens, therefore, were entitled to claim such title only as their mother did really get from McAlister by her deed of 1856.

We know of no other title which McAlister had except that which he acquired from Leynch, which was only a leasehold estate; therefore Ann Butler, by her deed from McAlister, took no other or greater estate than the grantor had, and that being leasehold her children could only claim by distribution of her estate made by an executor or administrator. As no administration on her estate has taken place it would seem that appellant's administration sale of that property was premature. The sale was properly set aside and the purchaser properly released.

The order appealed from will therefore be affirmed. *Order affirmed.*

In the county court at Toronto may be seen a venerable tar, who has found a haven in these legal precincts as a subordinate officer, after having been tossed on the ocean for many a year in "Her Majesty's" service. Not long ago, when the hour for adjourning a sitting of the court had arrived, the crier was absent, and the judge turning to the quondam mariner, said: "Captain, adjourn the court." Trained to prompt obedience, the "captain" shouted in stentorian tones, "Oh yes! oh yes! oh—yes—" But of the mystic formula no more came to his command. Not to be foiled in the discharge of duty, he proceeded in his own fashion. "Ladies and gentlemen, you may consider this here court adjourned. Clew up your sails and heave the anchor. You must all be here at ten o'clock Monday morning. We will then weigh anchor and make sail. God save the Queen!" Astonished silence held all present for a moment, and then gave way to a peal of laughter, in which even "the court" was compelled to join.

Circuit Court, E. D. Louisiana.

COPP v. LOUISVILLE & N. RWY. CO.

1. **LIMITATIONS**—Application of State Statutes. Under Rev. St. U. S. § 721, when Congress creates a new right of action, without providing any limitation thereto, the State Statutes of Limitations apply, and are binding upon the United States courts.
2. **SAME**—Interstate commerce—Suit for discrimination. The right of action created by the Interstate Commerce Act, (24 St. p. 380, secs. 3, 9,) in favor of the party against whom discrimination is made in the charges for the transportation of merchandise, comes within Rev. Civil Code, Art. 3536, providing a limitation of one year to actions for damages resulting from *quasi* offenses.

Decided April 21, 1892.

At Law. Action by Mr. Frank T. Copp against the Louisville & Nashville Railway Company to recover an amount paid for freight in excess of that paid by others for similar service. New trial granted.

B. R. FORMAN, for plaintiff.

BAYNE & DENEGRE, for plaintiff.

Mr. Justice BILLINGS delivered the opinion of the Court:

The plaintiff has brought a suit under the Act of Congress known as the "Interstate Commerce Act," (24 St. U. S. p. 380, Secs. 3, 9,) to recover the amount of freight paid by him to the defendant in excess of that paid to it by others for similar service. An exception was filed by the defendant interposing the plea of the limitation or prescription in force under the statute of the State of Louisiana. The statute relied upon is Rev. Civil Code, Art. 3536, which provides that "the following actions are also prescribed by one year. That for injurious words, whether verbal or written, and that for damages caused by animals, or resulting from offenses or *quasi* offenses." It is claimed by the defendant this is an action for a *quasi* offense, and it is controlled by the State statute. Code Prac. Art. 28, declares that "personal actions are grounded on four causes: Contracts, *quasi* contracts, offenses, *quasi* offenses;" and article 32 further defines personal actions arising from *quasi* offenses to be when the ground of action is the injury done to another by one of those faults which are not considered as real crimes or offenses. It has not been questioned, and I think cannot be questioned, that the fault complained of by the plaintiff is included within the definition of "*quasi* offenses."

The question is whether this State Statute of Limitations applies to this action. The action arises from a law of Congress against discrimination in the charges for the transportation of merchandise. Where there has been discrim-

ination, Congress has created a right of action in favor of the party against whom it has been made for the excess of the charge collected from him, as compared with that collected from others. It is to be observed that in the act of Congress there is no limitation as to time, and that, unless the State statute applies, there is no limitation. On the other hand, the action is authorized in discrimination, with or without damage; and to that extent it is a statute in the nature of a statutory provision for an action to protect the interests of the public, i. e., to secure a uniform rate of charge for the transportation of merchandise by common carriers, and giving an action even in case the party discriminated against had paid no more than the value of the service of transportation. Nevertheless it is a purely civil action, and, by denomination or definition, is within the meaning of the State statute of limitations. The question is whether section 721 of the United States Revised Statutes, being a portion of section 34 of the Judiciary Act of September 24, 1789, includes the limitation or prescription for actions known as "*quasi*" offenses contained in the Louisiana statute. In Angell on Limitations, Sec. 24, the rule is laid down as follows:

"Under the 34th section of the Judiciary Act of 1789, the acts of limitations of the several States, where no special provision has been made by Congress, form a rule of decision in the courts of the United States; and the same effect is given to them as is given them in the state courts."

This passage from Angell is adopted by the Supreme Court as a correct statement of the law in Hanger v. Abbott, 6 Wall., at page 537. In Townsend v. Jemison, 9 How., 414, the Supreme Court quote approvingly that in the courts of the United States the law of the former governs, and say that "Statutes of Limitation, unless the plaintiff can bring himself within their exceptions, appertain *ad tempus et modum actionis instituende* and not *ad valorem contractus*." In McIver v. Ragan, 2 Wheat., 25, at page 29, Chief Justice Marshal says: "It would be going far to add to these exceptions;" i. e., those exceptions made by the legislature. In McCluny v. Silliman, 3 Pet., 270, where the Act of Congress made it the duty of the registers of the land office to enter, upon application, certain lands, and the action was brought against a register for not having entered lands upon the proper application of the plaintiff—the action being an action upon the case, and the statute of Ohio (the suit was brought in the United States Circuit Court in the District of

Ohio) limited to six years all actions upon the case—the Supreme Court held that the plea setting up the State Statute of Limitations was a good plea. In that case one of the errors assigned was—

"That no Statute of Limitations of the State of Ohio, then in force, is pleadable in an action upon the case brought by a citizen of one State against a citizen of another, in the Circuit Court of the United States, for malfeasance or non-feasance in office in a ministerial officer of the General Government, and especially when the plaintiff's rights accrued to him under a law of Congress."

In reply to this objection, the court, at page 271, say:

"Where the statute is not restricted to particular causes of action, but provides that the action, by its technical denomination, shall be barred, if not brought within a limited time, every cause for which the action may be prosecuted is within the statute."

In Ross v. Duval, 13 Pet., 45, the Supreme Court apply the statute of limitations of the of the State of Virginia to judgments rendered in the United States circuit courts. At page 60 the court say:

"If this, then, be a limitation law it is a rule of property; and, under the thirty-fourth section of the Judiciary Act, is a rule of decision for the courts of the United States."

In Michigan Ins. Bank v. Eldred, 130 U. S., 693, 9 Sup. Ct. Rep., 690, it is reiterated, as the result of all the decisions of the Supreme Court, that the Statutes of Limitations were laws of the several States, and under the thirty-fourth section of the Act of 1789, in the absence of special provision by Congress, were binding upon the courts of the United States, as they would be upon the courts of the State in which the United States courts sit. In this case the Supreme Court of this State has held that the United States Circuit Courts had exclusive jurisdiction over the actions arising under the Act of Congress under which this action is brought. But I do not see that the exclusive jurisdiction of the United States courts affects the question presented here; for, if the statute would control the matter in the State courts in case they had jurisdiction, the statute is nevertheless the rule of decision. The binding force of the State Statute of Limitations upon the United States courts in cases where they have jurisdiction comes from section 34 of the Judiciary Act, and the statute made a rule of decision, in cases to which it applies, equally whether the State courts also have jurisdiction or not. The

statute becomes a rule of property in the United States courts, if it would include a similar action in the State court. My conclusion is that the Statute of Limitations of the State applies to this case.

The motion for a new trial will therefore be granted.

THE recent case of *Regina v. Ring*, 61 L. J. R., M. C., 116, established the important point that if a man tries to pick a pocket, he may be convicted of an attempt to steal without proof that there was anything in the pocket. The contrary had been held in *Regina v. Collins*, 33 Law J. Rep., M. C., 177, decided as long ago as 1884, but that decision was virtually overruled in *Regina v. Brown*, 59 Law J. Rep., M. C., 47. There seems, however, to have been a misapprehension in some quarters as to the effect of the last named case, and accordingly in *Regina v. Ring* a case raising the point was stated for the consideration of the Court for Crown Cases Reserved. There can be little doubt that the decision of that court is in accordance with the true principles of justice. Where a person tries to pick the pocket of another, it is obvious that the felonious intention exists whether there is anything in the pocket or not; and it is certainly a startling proposition that a man's guilt or innocence should depend upon whether the pocket is empty or not—a purely accidental circumstance. Under the law as laid down in *Regina v. Collins* it was necessarily impossible to establish the guilt of a prisoner charged with attempting to pick a pocket unless the person whose pocket was attempted could be secured as a witness, which frequently could not be done, owing to the circumstances under which this class of offense usually takes place, and many guilty persons consequently escaped punishment.

—*Law Journal, London.*

MIXED juries are now in use in New Zealand. This is comparatively a new colony, but it has prospered wonderfully, and has a population of over six hundred and fifty thousand whites. Although the native population of one hundred thousand, fifty years ago has decreased to forty thousand, the Maori element is now taking a far higher place than the Indian in Canada. The Maoris have four members of their own race in each of the two Houses of Parliament, and it is said that they occupy more than their fair share of the debates, as they are orators born. Maori magistrates sit on the bench with the European judges to determine questions of native title, and Maoris charged with crime are tried by a semi-Maori jury.—*Can. Legal News.*

**Supreme Court of the District of Columbia,
IN GENERAL TERM.**

**RICHARDS ET AL., WEST ET AL.,
CLARK ET AL.**

V.

**ROBERT WALDRON, CHARLES MED-
FORD, SAMUEL ROSS, AND JOHN
MILLER.**

Under the statute relating to mechanics' liens the lien holder takes, subject to all deeds of trust that attach to the premises prior to the commencement of the work upon the buildings, whether the deed of trust is given to secure a note for advances entirely in money, or in materials, or partly in money and partly in materials.

The CHIEF JUSTICE and Justices JAMES and BRADLEY sitting.

In Equity. Nos. 11,036, 11,176, 11,287. Consolidated.

Decided June 18, 1892.

Messrs. A. B. WILLIAMS, W. J. NEWTON and JOHN RIDOUT for complainants.

Messrs. SHEPPERD & LAVENDER, R. ROSS PERRY and A. B. DUVALL for defendants.

Mr. Justice BRADLEY delivered the opinion of the Court:

These several causes, consolidated by consent decree were heard together, and were brought here by appeal from the final decree settling and adjusting the rights of the several respective parties. The suits were instituted by the complainants to enforce mechanics' liens against the land and improvements described in the proceedings. Other mechanics' lien claimants were admitted as co-complainants upon petition. The land was sold under a decree passed with the consent of all parties. A certain portion of the proceeds of sale were brought into court pursuant to the decree, to await the ultimate result of the suits and the balance was distributed.

By an agreed statement of facts filed and used as the evidence in the consolidated causes and by the matters admitted in the pleadings it appears that, prior to the 28th day of February, 1887, the title to the land described in the proceedings was in the Howard University, that defendant Ross owned a valuable leasehold interest in it, and that on that day defendant Waldron contracted to purchase the land from Ross for \$7,211, and Ross agreed to make advances for building purposes to the amount of \$6,713.92. Ross conveyed his leasehold interest to Waldron, caused a deed of the land to be made to Waldron direct from the Howard University, and Waldron executed his promissory note payable to the order of Ross for \$13,925, payable one year after date, with inter-

est at six per centum per annum, payable quarterly. The deed and deed of trust were immediately recorded. The times and amounts of the advances were fixed by a written agreement of the same date which provided also for the release of certain of the lots embraced in the deed of trust prior to payment in full of the note, upon specified terms of payment.

The advances under this agreement were to be made in cash. The agreement was not recorded.

After the title was acquired by Waldron, Ross agreed to make further advances of \$100 on each lot to the amount of \$2,200, and Waldron, on March 2, 1887, executed another deed of trust of the land to secure his promissory note for that amount payable one year after date with interest. This trust was immediately recorded, but nothing appeared of record to indicate that the note secured represented advances to be made. Both of these deeds of trust were recorded before the commencement of the construction of the buildings subsequently erected, with reference to which the mechanics' liens were filed, and are sought to be enforced by these suits.

Some time later, and after the buildings were in course of erection, Ross agreed to make a further advance of \$900 to complete the houses. This was secured by a promissory note, and a deed of trust of one of the sub-lots. The mechanics' liens were released as to this lot, and there is now no controversy over the distribution of the portion of the fund realized from its sale.

It is not claimed that the complainants had any actual knowledge of the deeds of trust put upon the property before the beginning of the work upon the buildings, and they were ignorant of the fact that the promissory notes given, to any extent represented advances to be made, or that there was any agreement to make advances.

Ross, in good faith, under his contract with Waldron, advanced the whole amount covered by the several notes, and exceeded the amount by more than \$100. The amount of the advance agreed to be made was \$9,813.92. Of this sum \$7,260 was advanced in cash, and the balance in material, agreed to be and actually accepted by Waldron as cash.

All of these advances of cash, or material, were made upon the several lots under the agreement before any of the notices of lien were filed against the lots respectively chargeable thereby.

On Nov. 14, 1887, before maturity, the notes for \$13,925.92 and \$2,200 were indorsed and deliv-

ered for full value, *bona fide*, without notice of any equities affecting the security to the defendant John Miller.

The decree of the special term gave priority of lien to the two trusts for \$18,925, and \$2,200, respectively, awarding satisfaction thereof out of the proceeds of sale upon the terms specified in the agreement between Ross and Waldron relating to releases under the first trust, and as to the \$2,200 note by charging each lot with the sum of \$100 and interest from the date of the note.

From this decree the complainants and Ross appealed. The latter, however, has made no point against the decree at the hearing or in his brief, and it is assumed that he is satisfied with the decree and has abandoned his appeal.

The complainants claim that the decree is erroneous because it gives priority to advances made under a contract that had no consideration to support it, and because a portion of the advances made were not in cash but in materials. The claim of want of consideration is based upon the assertion that the advances were at the option of Ross, and that he was not bound to make them. The fact is, however, that the promissory notes representing the advances agreed upon were made, and the deeds of trust to secure their payment were executed, and both notes and deeds were delivered to Ross. We are of opinion that the consideration to support the contract to make the advances was ample.

The complainants concede that a mortgage may be given to secure future advances, and that such mortgage will be valid if the mortgagor is under a legal obligation to make the advances. This has been settled in this jurisdiction certainly since the decision of *Shirras v. Craig*, 7 Cranch, 34. It is sufficient if the mortgage or deed of trust upon its face purports to secure the payment of a specified amount, and the actual agreement, or the fact that it is given to secure advances to be made in the future, need not be expressed in it. In the case just cited, Marshall, Ch. J., remarks: "It is true that the real transaction does not appear on the face of the mortgage. The deed purports to secure a debt of £30,000 sterling due to all the mortgagees. It was really intended to secure different sums, due at the time to particular mortgagees, advances afterwards to be made, and liabilities to be incurred to an uncertain amount" * * * After remarking that such a transaction must sustain a rigorous examination, he adds: "But if upon investigation the real transaction shall appear to be fair though somewhat variant from that

which is described, it would seem to be unjust and unprecedented to deprive the person claiming under the deed of his real equitable rights, unless it be in favor of a person who has been in fact injured and deceived by the misrepresentation."

Lawrence v. Tucker, 23 How., 14.

There can be no pretence that the complainants were misled or deceived. They do not claim to have known, or that they had any notice that the deeds of trust were in fact given in part to secure advances to be made. They were constructively notified by the record that the land upon which they put their labor and material was subject to the burden of these two trusts, and the variance between the indebtedness described as existing and the actual fact adds no force or equity to the complainant's suit.

It is contended by the complainants that to the extent that the secured notes represent material furnished by Ross, he is not entitled to priority because his agreement with Waldron was for cash, and that for materials furnished he must be relegated to the rights conferred by the mechanics' lien statute. If the agreement originally made for advances had been in fact for materials instead of cash although represented by a promissory note, the agreement would have been valid, and Ross would have been entitled to priority over the mechanics' liens. *Brooks v. Lester*, 36 Md., 65.

If the adverse claimants were junior mortgagees, either ignorant or fully informed of the actual contract, it could not be seriously claimed that they would be in any position to controvert the right of Ross to his whole security unimpaired, in view of the fact that in good faith he had furnished full value for the notes in money and materials before their security was recorded. In what better position are the complainants? What talismanic right can they claim either under the statute, or under the general principles of equity by reason of being the holders of mechanics' liens. Their right is purely a statutory one. It is in derogation of the common law, and in some respects it is plainly in violation of the principles of equity.

There can exist no reason why any larger right outside of those conferred by the statute should be attributed to or exercised by the mechanics' lien holder, than those recognized in equity as its subjects.

The right to substitute materials in the place and stead of cash was plainly within the exercise of the parties to the agreement. If they so treated the materials furnished, the lien

holders cannot controvert the validity of the act if they are to be subrogated to Waldron's contract.

To support a superior equity to that of Waldron, or of Ross they must show that they have been misled, deceived and injured. This they have not done. It is claimed that under the law their liens relate back to the beginning of the work and that although no lien was in existence at the time when the materials were furnished, and the right might never be exercised by filing the requisite notices, yet with reference to a possible lien it was the duty of Ross to comply strictly with his agreement, and that the variation from it by contract subsequent was subordinate to the complainants' statutory right.

The contention made is unsound and is not supported by any principle of equity. The statute confers no such superior right of inquisition and abrogation. Under it the lien holder takes, subject to all deeds of trust that attach to the premises prior to the commencement of the work upon the buildings, whether the deed of trust is given to secure a note for advances entirely in money, or in materials, or partly in money and partly in materials, and whether in good faith between the parties to the agreement, the mechanic not being misled, money is substituted for material or *vice versa*.

"The statute confers upon him no special prerogative to transcend the most familiar principles of the law and to claim privileges which are denied to all other citizens in the determination of their contract rights." *Schroeder v. Galland*, 134 Pa., 277.

Under the arrangement made between Ross and Waldron in the substitution of materials for cash the complainants were benefited, inasmuch as the materials went into the buildings and enhanced the security, whereas if the money had been advanced it might have been diverted from the proper direction. Be this as it may, and without reference to the fact that Miller became the owner of the notes for full value before any lien notice was filed, in good faith, and before maturity, we are of opinion that the special term was right in giving priority to the lien of the deeds of trust in question, *and the decree of that court is affirmed with costs.*

Death of Judge Edward Duffy.

Hon. Edward Duffy, one of the judges of the Supreme Court of Maryland, who died a few days ago at his country seat in Frederick County was one of the best known jurists in that State. He was born in Baltimore on January 1, 1831; was admitted to the bar on October 23, 1851; later elected a Judge of the Court of Common Pleas, and was elected as an Associate Judge of the Supreme Bench in 1882.

Court of Appeals of Maryland.

LUTHER T. FLOOK

v.

EBEN B. HUNTING.

A lease for ninety-nine years, renewable forever, made prior to the Act of 1888, will not be affected by that act, if subsequently the rent is divided up and apportioned among a number of lessees. They will hold subject to the conditions and covenants of the original lease.

Decided April, 1892.

Mr. Justice BRYAN delivered the opinion of the court:

This was a special case stated for the opinion of the Circuit Court of Baltimore City. It appears that on the 9th day of March, 1864, Henry Tiffany leased a certain lot of ground in Baltimore City to James Boyce at the annual rent of seven hundred dollars. The lease was for the term of ninety-nine years and was renewable forever. It contained the usual covenants, and in addition thereto the following: "And further, the said Henry Tiffany, for himself, his heirs and assigns, hereby covenants with the said James Boyce, his executors, administrators and assigns, that when and as the above described lot of ground shall have been improved by the erection thereon of good and substantial brick or stone dwelling houses, not less than three stories high and twenty feet front, he, the said Henry Tiffany, his heirs or assigns, will, at the request and proper cost of the said James Boyce, his executors, administrators or assigns, execute and deliver to him or them a separate lease for each house so built, with the lot of ground and curtilage appurtenant thereto, thereby so apportioning and dividing the entire rent hereby reserved, that each lot, into which the whole shall be so subdivided, shall be liable and bound solely for its own rent, which shall be a fair proportion of the whole and payable semi-annually on the days above mentioned for the payment of the whole rent." The leasehold estate is now the property of Eben B. Hunting, subject to the covenants of the lease. Hunting has contracted in writing to sell to Luther T. Flook this leasehold estate, and in the contract of sale he has agreed that when Flook shall have erected the dwelling houses mentioned in the covenant, he can demand and procure from the owner of the original rent the separate leases above mentioned, and that the rents reserved by the separate leases will be redeemable after ten years from their respective dates for a sum of money equal to their capitalization at the rate of six per cent. per annum under the provision of the Act of 1888, chapter 395. Flook refused to comply with

the contract on the ground that these rents would not be redeemable under this Act of Assembly. The question for the Circuit Court was whether the rents were so redeemable; and it held that they were, and decreed that Flook should perform the contract made in reference to the said lot of ground. He has appealed to this court.

As the original lease was made long prior to the Act of 1888, it cannot be affected by any of its provisions. This lease very distinctly created an irredeemable ground rent of seven hundred dollars a year. A redeemable rent of course would be of much less value. According to the lease the rent was binding on the whole lot, and it could be collected by distress from any personal property found on the premises, except such as was exempt by law. It was payable *in solido*, and not in separate proportions. All the property subject to distress which was found on the premises was liable for all the rent. An occupant of a portion of the lot could not relieve his goods from restraint by paying a proportionate part of the whole rent. But this covenant for apportionment stipulated that when the lot should have been improved by the buildings mentioned, the lessor would apportion and divide the entire rent so that each house and its lot should be liable and bound solely for its own rent, which was to be a fair proportion of the whole, and payable on the days appointed for the payment of the whole rent. The object of the covenant was simply to provide for the division and apportionment of the rent, which by the original lease was one and indivisible. Nothing is said about changing the character of the rent, so as to make it redeemable, and, therefore, less valuable. It is evident that the apportioned rent was to be paid in the same way as the original rent; and that the tenants of the apportioned parts of the leasehold were to have the benefit of the covenants contained in the original lease, and to be subject to the burdens imposed by them. It is not to be supposed that they were to be made liable to more onerous burdens, or to be entitled to greater benefits than those mentioned in these covenants. They were to occupy the position of the original lessee in all respects, except that their rents were to be apportioned. It is true that it is covenanted that the original lessor, or his assigns, shall execute separate leases for the different houses and their lots; but this was the convenient and appropriate mode of apportioning the rent. These separate leases are to be considered in connection with the covenant in the original lease authorizing and requiring them to be

made. By virtue of this covenant they sprung out of the original lease and are virtually separate portions into which it is required to be divided. They cannot be considered as new and independent transactions, originating at the time they are to be executed. There is a covenant in the original lease for a renewal from time to time forever. These renewals will be founded on the considerations which sustain the first lease and are really but continuations of it; they derive their existence from it, and unless the obligation of a contract may be violated, they must continue to be made with all the covenants of the first lease embodied in them. The separate leases mentioned in the covenant for apportionment of rent bear the same relation to the original lease, as the leases will do, which are to be made under the covenant to make renewals forever.

We do not think that the rents to be reserved in the separate leases in pursuance of the covenant will be redeemable under the Act of 1888, chapter 385. The decree of the Circuit Court must be reversed.

Decree reversed with costs in this court and the Circuit Court.

IT is well established law that an interlocutory injunction to restrain the infringement of a trade mark will not be granted (a) where the defendant has honestly infringed and has withdrawn the offending articles from sale and offered an undertaking immediately on being served with the writ, nor (b) where there is any material conflict as to the facts, nor (c) where the application has for any considerable time been delayed (*cf. Sebastian's Trade Marks*, 3d Ed., pp. 192, 193). The decision of Mr. Justice North in *Rosenthal v. Reynolds*, (1892) 9 P. O. R., 189, may be taken as having established that the same result will follow where the plaintiff has expressly disclaimed that part of the trade mark which he sue to protect, even although his action is one of "as and for."—*Law Jour., Lond.*

UNLESS Lillian Russell pays up that judgment for refusing to wear tights she will be put on the "limbites."

THE English are always ridiculing "Americanisms" of Language. The London *Law Times* now seems to have invented the term "memo" book for memorandum book. Also "Progressist Parliament."

Law Blanks at the Law Reporter, 503 E.

Supreme Court of New York—General Term.—First Department.

ISAAC FROMME, APPELLANT,
v.

ABRAHAM LISNER, RESPONDENT.

**APPLICATION FOR DISCOVERY AND INSPECTION.
VERIFICATION OF PETITION BY ATTORNEY
IRREGULAR.**

Decided February, 1892.

Hon. CHARLES H. VAN BRUNT, P. J., EDWARD PATTERSON,
and MORGAN J. O'BRIEN, JJ., sitting.

On an application for discovery and inspection by defendant, before answer, the petition must be sworn to by the party to the action, or some good reason must be stated to excuse a personal verification. The mere fact that the party does not reside in the county where his attorney resides is not sufficient reason.

The petition should, moreover, show that there are merits on the part of the defendant and that he has some defense.

APPEAL from an order granting a discovery and inspection, with leave to take copy of an agreement referred to in the complaint. The application was founded upon a petition verified by the attorney, who swore that the reason why the verification was not made by the defendant was that defendant did not reside in the county where the attorney resided and that his information was received from such defendant.

Mr. Justice VAN BRUNT delivered the opinion of the Court:

The complaint alleges in substance that, by an instrument in writing, the assignor of the plaintiff was employed to procure a purchaser for certain property, and that therein a certain compensation was promised; that a purchaser was procured and the compensation earned, and that prior to the commencement of the action an assignment of the claim was made and judgment is prayed for.

The defendant, before answer, made a petition asking for an inspection of the agreement. The petition was sworn to by the attorney and not by the defendant, and simply alleged that the agreement was not set forth in the complaint; that it related to the merits of the action and was indispensable to the deponent for the preparation of the answer; that the agreement is in the possession of the plaintiff or his attorney, and the attorney has been requested to allow the deponent to inspect the same, which was refused; that deponent had no copy of said instrument in his possession

and is informed by the defendant that he has no copy thereof, and does not know the terms and conditions thereof, or whether the plaintiff has performed the same as alleged in the complaint.

In the jurat of the petition it is stated that the reason the attorney makes the affidavit is that defendant does not reside in the city and county of New York, where deponent resides, but that defendant informed deponent that he had no copy of the instrument and does not know the terms and conditions thereof.

No affidavit of merits accompanies the papers and upon this petition an order was granted for the inspection, and from such order this appeal is taken.

In the first place there is no sufficient reason why the affidavit was not made by the defendant. The mere fact that defendant does not reside in the city and county where the attorney resides is no ground whatever for accepting an affidavit from the attorney. The statement might be entirely true, and the defendant have been in the company of the attorney when he made the affidavit. In applications of this character the person to make the affidavit is the party to the action, and there must be some good ground presented to the court in order that the absence of his oath can be excused. The mere fact that he does not reside in the county where the attorney resides is not sufficient. It would be very convenient for a party, simply because he resides in another county, to get rid of the chances of being indicted for perjury by having his attorney make his affidavit for him upon declarations not made under oath. Something must be shown to demonstrate the impossibility of getting the affidavit of the client, and something more than the mere statements of the client, to justify any of these remedies.

And, furthermore, the papers do not show that there are any merits upon the part of the defendant, nor that he has any defense. The petition was entirely insufficient, and the order should have been denied.

The order should be reversed, with \$10 costs and disbursements, and the motion denied.

PATTERSON and O'BRIEN, JJ., concur.—*N. Y. Law Journal.*

LAWYER: "Have you conscientious scruples about serving as a juror where the penalty is death?"

Boston Talesman: "I have."

Lawyer: "What is your objection?"

Boston Talesman: "I do not desire to die."

THE COURTS.**Supreme Court of the District of Columbia
IN EQUITY.—New Suits.**

June 25, 1892.

14030. W. E. Brown v. Paul Bausch et al. To enforce mechanics' lien. Com. sols., Shepperd & Lavender; Defts. sol., E. L. Schmidt.

14031. Sallie C. Rollins v. E. T. Rollins. For divorce. Com. sols., W. E. Aughinbaugh and J. Altheus Johnson; Defts. sol., B. S. Minor.

June 27.

14032. H. E. Merrill v. Geo. Sheriff. To substitute trustee. Com. sols., Shepperd & Lavender.

14033. Carl Peterson v. C. Schneider et al. For injunction. Pliffs. attys., Cook & Sutherland.

14034. Maria Bell v. Lewis H. Crowe. To enforce vendors' lien. Com. sol., W. Wheeler.

14035. Cora V. Gerich v. Maggie E. Haske. To dissolve partnership. Com. sols., R. Ross Perry and M. J. Colbert.

June 28.

14036. L. H. Hollmann v. Christiana and Annie Hollmann. For partition of part of Whitehaven.

14037. C. S. Shreeve v. W. O. Shreeve et al. For partition by sale of real estate.

June 30.

14038. Chapin Brown v. Katherine Chase et al. To sell part of Metropolis View and other real estate. Com. sols., Gordon & Gordon.

14039. Bridget Sheehan v. Timothy Sheehan. For divorce. Com. sol., M. J. Colbert.

14040. E. B. Hay, Administrator, v. Henry Thompson et al. To enjoin sale and to adjust account of creditors. Com. sol., E. B. Hay.

July 1.

14041. S. J. Fague v. Thomas Hardy et al. General creditor's bill. Com. sol., H. O. Cloughton.

14042. C. & P. Telephone Co. v. E. L. Lambil. Injunction. Com. sol., C. S. Bundy.

July 6.

14043. G. W. Cissell v. B. S. Johnson et al. Com. sols., Edwards & Barnard.

14044. The Smith Transparent Ice Co. v. B. S. Johnson et al. Injunction. Com. sols., Edwards & Barnard.

14045. John O'Neil, alleged lunatic. Upon petition of Commissioners, D. C. De lunatico inquirendo. Com. sol., M. N. Richardson.

14046. Jefferson Scott, alleged lunatic. Upon petition of Commissioners, D. C. De lunatico inquirendo. Com. sol., M. N. Richardson.

14047. Mary Moriarity, alleged lunatic. Upon petition of Commissioners, D. C. De lunatico inquirendo. Com. sol., M. N. Richardson.

AT LAW—New Suits.

June 13, 1892.

33036. Frank Hoffa v. Jno. S. Belt. Judgment of Justice Bundy, \$67.17. Pliffs. atty., Percy Metager.

33037. Adam Meinberg, ex rel. H. P. Okie, v. Lawrence Meinberg. Account, \$275.00. Pliffs. atty., H. P. Okie.

33038. Nicholas White v. The District of Columbia. Damages, \$8,000. Pliffs. attys., Shellabarger & Wilson and Randall Hagner.

33039. I. S. Lyon v. E. S. Boteler. Note, \$100. Pliffs. atty., I. S. Lyon and J. G. Bigelow.

33040. Jas. L. Barbour & Son v. The District of Columbia. Damages, \$15,000. Pliffs. attys., Shellabarger & Wilson and R. Hagner.

June 14.

33041. Shellabarger & Wilson v. Frank Ward. Note, \$1,000. Pliffs. atty., R. Hagner.

33042. Meyer B. Newman v. Wm. S. Plager. Notes, \$471.35. Pliffs. atty., H. P. Okie; Defts. atty., Geo. K. French.

33043. The Beyman-Bauman Lead Co. v. Heisley & Wood. Account, \$109.92. Pliffs. attys., Abert & Warner.

33044. J. B. Bryan v. The District of Columbia. Damages, \$24,000. Pliffs. attys., Shellabarger & Wilson and R. Hagner.

33045. The Gotteschalks Co. of Baltimore, Md. v. G. T. Hilton. Note and account, \$433.66. Pliffs. atty., S. T. Thomas.

33046. J. P. Clark et al., trustees, v. The American Fire Insurance Co. of Philadelphia. Policy, \$1,391.37. Pliffs. atty., S. T. Thomas.

33047. The United States of America, ex rel. Elizabeth Trask, v. John Wanamaker, P. M. G. Mandamus. Pliffs. attys., Harvey & E. W. Spalding.

33048. The Central National Bank of Washington City v. N. Studer et al. Note, \$300. Pliffs. attys., Edwards & Barnard.

33049. The Central National Bank of Washington City v. John C. Entwistle, F. B. Mohun and G. J. Davis. Note, \$229. Pliffs. attys., Edwards & Barnard.

PHILIP, in passing sentence on two rogues, ordered one of them to leave Macedonia with all speed, and the other to try and catch him.

The manufacture of Blanks logically belongs and must inevitably remain in the hands of a concern composed of lawyers, and which has the enterprise and capital to equip a perfectly appointed printing office, and engage the best talent to manufacture the same. Made primarily for lawyers. For other people?—perhaps: You can buy them. Office 503 E. n. w.

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GEO. H. BOARDMAN,
Care LAW REPORTER OFFICE.

Legal Notices.**Rule of Court.**

RULE 20. * * * * * Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

FIRST INSERTION.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**
The 30th day of June, 1892.

Ruif Van Brunt
vs.
Margaret E. Van Brunt. } No. 13,873. Eq. Docket 23.

On motion of the petitioner, by Mr. Chas A. Walter, his solicitor, it is ordered that the defendant, MARGARET E. VAN BEUNT, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for absolute divorce upon the grounds of willful desertion and abandonment for the uninterrupted period of more than two years.

Provided a copy of this order be published once a week for three weeks prior to said day in the Washington Law Reporter.

By the Court. A. C. BRADLEY, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
27 By L. P. Williams, Asst. Clerk.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of LUCY L. MILLETT, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 29th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of June, 1892.
CLARENCE W. MILLETT,
27 607 F St., n. e.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of July, 1892.

James Ernest Garner
vs.
Samuel Hawkins et al. } No. 13,992. In Equity. Doc. 23.

On motion of the plaintiff, by Mr. B. F. Leighton, his solicitor, it is ordered that the defendants, SAMUEL HAWKINS, HOLLY HAWKINS and ALMINA HAWKINS, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain partition by sale of parts of lots O, P, I and R, in square 755, in the city of Washington, D. C., more particularly described in the bill of complaint herein.

By the Court. A. C. BRADLEY, Justice, &c.
True copy. Test: J. R. Young, Clerk.
27 By M. A. Clancy, Asst. Clerk.

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of RICHARD F. HARVEY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of June, 1892.
GEO. W. HARVEY,
27 Carns & Miller, Proctors. No. 1016 Pa. Ave., n. w.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

The 6th day of July, 1892.

Carrie C. At Lee et al. } vs. } No. 14,019. Equity Docket 34.
Wm. Edward Paine et al. }

On motion of the complainants, by Mr. George Francis Williams, their solicitor, it is ordered that the defendants, WILLIAM EDWARD PAYNE, BOSTON BALDOCK, PONCE (otherwise Poncia) BALDOCK, FRANK BALDOCK and his wife ANNA BALDOCK, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to so reform a certain deed from the ancestors of defendants, as to perfect the title of complainants to the south 18 feet, by 88 feet of lot 6 in square 525, in the City of Washington, in said District.

By the Court. A. C. BRADLEY, Justice, &c.
A true copy. Test: J. R. Young, Clerk.
27 By M. A. Clancy, Asst. Clerk.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia holding Special Term for Orphans' Court business, letter, testamentary on the personal estate of DAVID JACKSON late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of June, 1892.
JOSEPH J. WATERS,
3141 M St., n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Anna Sands
vs.
Ellen Heffernan et al. } Equity, No. 14,021.

It appearing to the Court that the defendant JOHN SANDS, has had process duly issued against him, which process has been returned not to be found, it is by the Court, this 6th day of July, 1892, ordered that the said John Sands cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise this cause will be proceeded with as in case of default.

Provided a copy of this order shall be published in the Washington Law Reporter by successive weekly insertions for the space of three weeks preceding said day.

The object of this suit is to have assigned to the defendant, Ellen Heffernan, her dower in the property described in the bill, for an accounting and for a receiver.

A. C. BRADLEY, Justice.
A true copy. Test: J. R. Young, Clerk, &c.
27 By M. A. Clancy, Asst. Clerk.
[Filed July 6, 1892. J. R. Young, Clerk.]

SECOND INSERTION.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,**
Holding a Special Term for Orphans' Court Business.

This 24th of June, 1892.

In re estate of REBECCA S. GILLISS, late of the District of Columbia. No. 5083. Admin. Doc. 18.

Application having been made for the probate of a paper-writing propounded as the last will and testament, and for letters testamentary on the estate of said Rebecca S. Gilliss, deceased, by James Gilliss:

Notice is hereby given to all concerned to appear in this court on Friday, July 22, 1892, at one o'clock p. m., to show cause, if any exist, against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter and Evening Star once in each of three successive weeks before said day.

By the Court. A. C. BRADLEY, Justice.
A true copy. Teste. L. P. WRIGHT, Reg. of Wills, D. C.
26 Morris & Hamilton, Proctors for applicant.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

Abraham Depue, et al. } No. 13,718. Equity.
 vs.
 John H. Bridwell, et al. }

The trustees herein, Job Barnard, Andrew A. Lipscomb and John Ridout, having reported sales of all the real estate described in the bill in this cause, for the aggregate sum of \$30,924.26, it is this 28th day of June, 1892, ordered, that the said sales be finally confirmed unless cause to the contrary shall be shown on or before the 28th day of July 1892.

Provided a copy of this order be published for three successive weeks before that date in the Washington Law Reporter.

A true copy. Test: A. C. BRADLEY, Justice.
 26 J. R. Young, Clerk,
 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Robert M. Bell } In Equity. 13,639.
 vs.
 Elizabeth G. Malone et al. }

John Ridout, the trustee in this cause, having reported the sale of the east half of lot 14 in square eighty-four (84), in the city of Washington, District of Columbia, to Leo Simmons for \$150, it is this 28th day of June, 1892, adjudged and ordered that said sale be and it is hereby finally ratified and confirmed unless cause to the contrary be shown on or before the 28th day of July, 1892.

Provided a copy of this order be published in each of the three issues of the Washington Law Reporter published next after the date of this order.

A. C. BRADLEY, Justice.
 A true copy. Test: J. R. Young, Clerk.
 26 By M. A. Clancy, Asst. Clerk.
 [Filed June 28, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Lee Simmons et al. } In Equity. 13,006.
 vs.
 L. Whiber Reid et al. }

John Ridout, the trustee in this cause, having reported the sale on lots five (5) and twenty-two (22) in square numbered ten hundred and seventy-seven (1077) in the city of Washington, District of Columbia, to Leo Simmons, for \$300 cash, it is this 25th day of June 1892, adjudged and ordered that said sale be and it is finally ratified unless cause to the contrary be shown on or before the 25th day of July 1892.

Provided a copy of this order be published in the Washington Law Reporter in each of its three successive issues, published next after the date of this order.

A. C. BRADLEY, Justice.
 A true copy. Test: J. R. Young, Clerk.
 26 By M. A. Clancy, Asst. Clerk.
 [Filed June 25, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Louis P. Shoemaker et al. } In Equity. 11,534.
 vs.
 George A. Tibbets et al. }

John Ridout, the trustee in this cause, having reported the sale of the real estate described in the bill, being part of the tract of land known as "Slippery Hill" to Louis P. Shoemaker for \$6,000, cash, it is this 28th day of June, 1892, adjudged and ordered that said sale be and it is hereby ratified and confirmed unless cause to the contrary be shown on or before the 28th day of July, 1892.

Provided a copy of this order be published in the Washington Law Reporter in each of the three issues of said paper published next after the date of this order.

A. C. BRADLEY, Justice.
 A true copy. Test: J. R. Young, Clerk.
 26 By M. A. Clancy, Asst. Clerk.
 [Filed June 28, 1892. J. R. Young, Clerk.]

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of AMELIA BUTLER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 22d day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of June, 1892.

CORNELIA BROWN,

26 Formerly known as Cornelia Burke, 1814 11th St., n. w.

Legal Notices**This is to Give Notice.**

That the subscriber, of Chicago, Ill., has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of ROBERT McMURDY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of June, 1892.

ROBERT N. McMURDY,
 Care of CHARLES W. NEEDHAM,
 Washington Loan and Trust Building, 9th & F St., n. w.
 26 Charles W. Needham, Proctor.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
 Holding a Special Term for Orphans' Court Business.**

June 26th 1892.

In the case of Lillian L. Dunn, administratrix of CLARA E. LASH, deceased, the administratrix aforesaid has, with the approval of the court, appointed Friday, the 29th day of July, A. D. 1892, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the administratrix will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: A. C. BRADLEY, Justice.
 26 J. P. WRIGHT,
 Register of Wills for the District of Columbia.
 No. 4386. Ad. Doc. 16. B. F. Leighton, Proctor.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
 Holding a Special Term for Orphans' Court Business,**

June 26, 1892.

In the case of George C. Ober, executor of ANN M. NASH, deceased, the executor aforesaid has, with the approval of the court, appointed Friday, the 29th day of July, A. D. 1892, at 11 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: A. C. BRADLEY, Justice.
 26 J. P. WRIGHT,
 Register of Wills for the District of Columbia.
 No. 4386. Ad. Doc. 16. J. T. Cull, Proctor.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
 The 24th day of June, 1892.**

Matthai Ingram & Co. } No. 32,844. Docket, 37.
 vs.
 John Conway. }

On motion of the plaintiffs, by Mr. Chapin Brown and Frank C. Townsend, their attorneys, it is ordered that the defendant, JOHN CONWAY, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to subject to the satisfaction of the plaintiff's claim, certain credits of the defendant attached herein.

By the Court. A. C. BRADLEY, Justice, &c.
 26 True copy. Test: J. R. Young, Clerk, &c.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of MARY ELEANOR RUTH, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of June, 1892.

AMERICAN SECURITY AND TRUST CO.

By PERCY B. METZGER,
 26 Percy B. Metzger, Proctor. Trust Officer.

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WASHINGTON, D. C., - - - - JULY 21, 1892

We call especial attention to the case of Edward H. Bartlett and others, acting as the Vestry of St. Matthews Parish, against Rev. Frederick S. Hipkins, published in the present number of the REPORTER. The case has been recently decided by the Court of Appeals of Maryland, and construes a statute which is in force in the District of Columbia as well as in the State of Maryland, namely the Maryland Act of 1798, chapter 24, incorporating the Vestries of the Protestant Episcopal Church and vesting in them the title and possession of all lands and property belonging to the Church. The opinion is official.

Supreme Court of Pennsylvania.

WISECARVER v. TEMPLE (APPELLANT).

Decided Oct. 8, 1891.

Appeal No. 233, Oct. T., 1891, from judgment of C. P. Green Co., Jan. T., 1890, No. 135, on verdict against defendant and garnishee, in an attachment execution *sur* judgment.

An attachment execution had been served upon Panley, the garnishee, who, in answer to a rule and interrogatives duly served, filed an answer. Subsequently exceptions to the service of the attachment were filed, and a petition was filed for leave for garnishee to withdraw his answer. The court (1) permitted the sheriff to file an amended return to his service of the writ of attachment; (2) discharged the rule to set aside the attachment and quash the writ; and (3) entered judgment against the garnishee.

The assignments of error specified (1-3) this action of the court.

Per Curiam, Jan. 4, 1892. We need not discuss the question of the sufficiency of the service upon the garnishee, for the reason that he appeared and filed an answer. Under all the authorities this was a waiver of any defect in the service; Lorenz's Administrators v. King, 28 Pa., 93; Lupton v. Moore, 101 Id., 318.

Judgment affirmed.

Court of Appeals of Maryland.

EDWARD H. BARTLETT AND OTHERS,
ACTING AS THE VESTRY [OF ST.
MATTHEWS PARISH.

v.

REV. FREDERICK S. HIPKINS.

1. Under the Act of 1798, Chapter 24, incorporating the Vestries of the Protestant Episcopal Church and vesting in them the title and possession of all lands and property belonging to the Church, the vestry is not only authorized to "choose" or appoint a minister, but his tenure and the termination of his pastoral relations are the subject matter of contract between the vestry and himself.
2. That Title Second, Canon Fourth, of the Canons of the Protestant Episcopal Church is inconsistent with the Act of Maryland of 1798, and is therefore not in force in the State of Maryland.
3. That in this case the vestry engaged the rector in compliance with the Act of 1798, and under its provisions, having contracted to pay him a certain sum per year, no other reference to time being made, it was a contract for a definite time, i. e., from year to year, and if such contract had been made for an indefinite time it would have been one to be terminated at the will of either party.
4. That in the case before the court, the vestry acted within their powers under the law, and the complainant, Hipkins, is no longer rector of the parish and his bill is dismissed.

The facts in this case are as follows:

The Parish of St. Matthew, Garrett County, Maryland, was constituted in 1874. In 1887 the vestry by resolution of the 3d of December, called to the rectorship of the parish the Rev. Frederick S. Hipkins, and agreed to pay him the annual sum of \$700 for his services. Mr. Hipkins accepted the call and agreement and entered upon his duties as a rector.

Differences having arisen between the rector and the vestry, the vestry by resolution of the 13th of September, 1890, requested the rector to resign his rectorship, the resignation to take effect from the 1st of January, 1891. The rector refused to resign and thereupon by resolution passed on the 15th of November, 1890, the vestry notified the rector that they would consider his rectorship of the parish as terminated on the 1st of January, 1891, that being the end of his current year. The rector thereupon protested against the right of the vestry to remove him and appealed to the bishop of the diocese, claiming that the bishop had jurisdiction, under canon 4, title 2, of the general convention of the Protestant Episcopal Church of the United States relating to the differences between ministers and their congregations. The vestry were cited to appear before the bishop and the standing committee of the diocese on this appeal. In reply they filed a protest denying the

authority and jurisdiction of the bishop in the premises, asserting their right and power under the law of the State of Maryland to dissolve the pastoral relation between the rector and the parish. The bishop with the advice of the standing committee overruled the protest and exception by the vestry and thereupon declared that he had jurisdiction and that the case was properly before him as coming under the canon, the vestry having failed to comply with the condition of the civil law, and he thereupon adjudged and declared (with the unanimous advice of the standing committee) that the action by the vestry was beyond their power under the civil and ecclesiastical law and did not and would not work a dissolution of pastoral connection. The vestry disregarded the judgment of the bishop and relying upon their supposed right and authority under the law of the State, on the 1st of January, 1891, closed the church against the said Hipkins, who claimed to be the rightful rector of the parish. The said Hipkins thereupon filed his bill to obtain an injunction against the vestry from interfering in any way or manner with the exercise by him of his office as rector. To this bill the defendants filed their answer, and after hearing below the court granted the injunction as prayed, and the case was brought to the Court of Appeals by the vestry.

Messrs. WM. PINKNEY WHYTE, J. W. THOMAS, THOMAS & SINCELL, HENRY WISE GARNETT, and HENRY E. DAVIS, counsel for appellants.

Messrs. CHAS. HANFIELD WYATT, EDW. N. RICH, counsel for appellee.

The opinion of the Court is as follows:

Mr. Justice ROBINSON delivered the opinion of the Court:

The question in this case is an interesting one, and one, too, of more than ordinary importance. The plaintiff is a clergyman of the Protestant Episcopal Church, and the defendants are vestrymen of Saint Matthew's Parish, Garrett County. After some correspondence between the plaintiff and the defendants, and the bishop of the diocese, in regard to filling a vacancy then existing in the rectorship of the parish, the defendants on the 3d of December, 1887, passed the following resolution:

"That in consideration of the letter received from the bishop, the Rev. F. S. Hipkins is hereby called to the rectorship of St. Matthew's Parish, Oakland, Md., also that the vestry pledge to the Rev. F. S. Hipkins the sum of seven hundred a year independent of what he may receive from the mission fund."

This call with the terms and conditions on

which it was offered was accepted by the plaintiff, and he at once entered upon the discharge of his duties as rector. Subsequently, on the 18th September, 1890, the vestry by resolution requested the plaintiff to resign his rectorship, the said resignation to take effect January 1st, 1891. This, however, he refused to do, and the vestry by resolution passed 15th November, 1890, notified him that his rectorship of the parish would terminate 1st January next ensuing. From this action of the vestry the plaintiff appealed to the bishop of the diocese, claiming under title second, canon fourth, of the Protestant Episcopal Church of the United States, that the vestry had no power to terminate his pastoral relations against his consent. This canon provides that in case of any disagreement between a rector and the vestry, in regard to the dissolution of his pastoral relations either party may give notice of such disagreement to the bishop and that the decision of the bishop in the premises shall be final and binding upon the parties. Section 4, however, provides, "that this canon shall not be in force in any diocese which has made or shall hereafter make provision by canon upon the subject, nor in any diocese with whose laws or charters it may interfere." In every diocese therefore in which this canon is in force, the termination of the pastoral relations of the rector must, it is clear, be governed by its provisions. On the other hand, if any diocese has adopted a canon of its own in regard to the subject matter or if the general canon law interferes with the State law, then the general canon law has no application or force in such diocese or State. No canon, it is conceded, has been adopted in this diocese upon the subject matter; and the question then is whether there is any State law inconsistent with the provisions of the general canon law, for if so the canon is not, it must be conceded, in force in this State. Now the Act of 1798, chapter 24, incorporating the vestries of the Protestant Episcopal Church and vesting in them the title and possession of all lands and property belonging to the church, provides that "the vestry of every parish shall have full power and authority from time to time to choose one or more ministers or readers of the Protestant Episcopal Church, (heretofore called the Church of England), to officiate in any church or chapel belonging to the parish and to perform the other duties of a minister therein for such time as the said vestry may think proper, and they may agree and contract with such minister or ministers, reader or

readers, for his or their salary, and respecting the use of the parsonage house or any glebe or other lands or other property, if any, belonging to the parish, and on such terms and conditions as they may think reasonable and proper, and their choice and contract shall be entered among their proceedings; and upon the expiration of such contract the said vestry may in their discretion renew their choice or make a new contract, but if they do not incline so to do, their former choice and contract shall remain, until they declare their desire to make a new choice or contract."

This act was in force at the time the plaintiff accepted the call tendered to him by the vestry, and when he entered upon the discharge of his duties as rector. By this act the vestry was not only authorized to "choose" or appoint a minister, but his tenure and the termination of his pastoral relations were made the subject matter of contract between the vestry and himself, provisions altogether inconsistent with the canon law and, being inconsistent, we do not see on what grounds that law can be considered as being in force in this State. The bishop, however, decided that the canon law was applicable in this particular case because the vestry failed to comply with the conditions of the civil law; and this being so, he decided also that the vestry had no power, either under the civil or ecclesiastical law, to terminate the pastoral relations of the plaintiff. Now, if it be conceded for the purposes of this case, that the vestry had failed to comply with the requirements of the civil law, the Act of 1798 still being in force, we do not see, with great deference, how its failure in this respect could make operative a canon not in force in this State. But be that as it may, whether the resolution of 3d December, in pursuance of which the plaintiff accepted the rectorship of this parish, be a compliance with the Act of 1798, depends upon the terms of the resolution as construed in the light of the facts and circumstances under which it was passed and the law as it then existed in reference to the subject matter. And in considering these it will be necessary to refer briefly to certain facts connected with the colonial history of the church which led to the passage of that act by which the vestries in this State were authorized to employ ministers and to contract with them in regard to the tenure of their office. By the Act of 1702 the Church of England, with its rites, ceremonies and sacraments, was declared to be the established church of the province; and by it provision

was made for the support of its ministers by an annual levy "of forty pounds of tobacco per poll upon every taxable person" within each respective parish. How far and to what extent, the church thus established was subject to the English ecclesiastical law has given rise to a good deal of discussion and about which there is some conflict of opinion. It may be fairly assumed, however, that the colonial church was subject to and governed by this law so far as it was applicable and was consistent with the chartered rights of Lord Baltimore. The Bishop of London as Bishop Ordinary not only claimed but exercised so far as was practicable ecclesiastical jurisdiction, but the distance and want of communication with the mother country and other causes rendered the exercise of this jurisdiction almost powerless. But in the presentation, appointment and induction of clergymen the colonial church was not governed, it is clear, by the ecclesiastical law. In England the presentation was made by the patron, the founder of the parish, having the right of advowson, or by his heir or alienee, and when presented, if there was no objection to him, he was instituted by the bishop; that is, put in the care of the souls of the parish. Then followed induction by the mandate of the bishop, being a ceremonial act performed by the inductor, the archdeacon, such as the delivery to the incumbent of the key of the church door, and then the tolling of the bell, or other like ceremony, being a symbolical delivery to him of the possession of the church and all the property belonging to the parish, including tithes, etc. And when once inducted, he thereby acquired a freehold interest in the property of the parish of which he could not be deprived except by ecclesiastical sentence. Here, however, the appointment was made by Lord Baltimore as the owner of all the livings and entitled therefore to the right of advowson, and when so appointed the minister was licensed by the Bishop of London, and he was then inducted by the governor. And though there does not appear to have been any ceremony accompanying the act of induction, the same legal effect followed it as in England. At least no clergyman once inducted was ever deprived of his benefice during the colonial period, for although subject to the jurisdiction of the Bishop of London, yet such were the difficulties attending its exercise that all efforts on his part, or by his commissary to bring offending clergyman to trial and punishment proved unavailing. And referring to this subject the Rev. Dr. Hanks

says: "Thus Lord Baltimore selected a clergyman in England and appointed him to a living, the Bishop of London gave him a license, the governor inducted him, if he did wrong the commissary tried him," if there happened to be a commissary, and "when convicted no power punished him, for after induction even his lordship, the proprietor, could not remove him, and the Bishop of London, his diocesan, could neither give or take away the meanest living." Hawk's Ecc. Com., 194.

This condition of things produced its legitimate fruits, and the persistent but unsuccessful efforts on the part of the vestry to dissolve the pastoral relation, when such dissolution seemed so desirable, forms a painful chapter in the colonial history of the church, the details of which we have no inclination to consider. And this continued down to the American Revolution, when Maryland having formed a constitution for its own government, put an end forever to the establishment. But the troubles of the church did not cease with its disestablishment. Many of its clergy remained loyal to the mother country, and before the Revolution was over a majority of the parishes were left without a rector. The proprietary rights of Lord Baltimore being annulled by the Revolution, he no longer had the power of appointment; and the Bishop of London, if his jurisdiction still continued, no longer attempted to exercise it, and if he had, such was the temper of the times, it is doubtful whether his authority would have been respected. There was no bishop in the State, and strange to say there never was a bishop of the Protestant Episcopal Church in this country until after the Revolution, Bishop Seabury of Connecticut, consecrated in 1784, being the first American bishop. So, practically speaking, there was no law, civil or ecclesiastical, for the government of the church, and it was therefore absolutely necessary to provide by law some mode for the appointment of ministers to fill not only the vacancies then existing but such as might occur in the future. And hence the Act of 1779, providing for the election of a vestry in every parish, in whom, when elected, was vested the title to all churches, chapels and property belonging to the parish, and this act further provided "that the said vestrymen or a majority of them shall have full power and authority to employ a minister of the Church of England to officiate in their respective churches or chapels for such time as may be agreed." We have thus briefly traced the causes which led to the passage of this act.

The laity had felt the mischiefs resulting from the appointment of ministers by patrons and strangers, and they had experienced, too, the difficulties in dissolving the pastoral relation when once established, however much the best interests of the parish might require such a dissolution. And to remedy all this the power to select or "choose" a minister, for such is the language of the act, was conferred upon the vestry, and his tenure was made a matter of contract between himself and the vestry. This act remained in force until the Act of 1798, in which was embodied the same provision in regard to the selection of a minister and his tenure when so selected, the word "choose" being substituted for "employ" used in the Act of 1779, and with this further significant and important modification, that if upon the termination of his tenure as fixed by the contract the vestry failed to make "*a new choice or contract,*" the minister was still to continue in his rectorship, until the vestry deemed it advisable to "make a new choice or contract."

This act was in full force when the defendants tendered the rectorship of this parish to the plaintiff, and when it was accepted by him, and Canon 4 being inconsistent with its provisions, it necessarily follows that the dissolution of the plaintiff's pastoral relations must be governed by and determined by the act. The contention, however, and it is the sole contention of the plaintiff, is that the general canon law must be considered operative in this particular case at least, because the defendants by the resolution of December 3d, by which the plaintiff was called to the rectorship of the parish, failed to comply with the conditions of the Act of 1798. Without conceding for a moment that the failure of the defendants in this respect could make operative a canon law otherwise conceded not to be in force in this State, let us see whether it can be fairly said that they have failed to comply with the conditions of the law. Here was a vacancy in the parish, and after some correspondence with the bishop the vestry offered to delegate to him its authority to call a minister. But this offer he declined because he had some doubts whether he could lawfully exercise delegated power, and further because he did not believe the plaintiff would accept the appointment unless he thereby had the full authority of a rector. Then, by the resolution of 3d December, the defendants tendered to the plaintiff the rectorship of the parish, agreeing at the same time to pay him seven hundred dollars a year. This call and

the terms upon which it was offered was accepted. Here, then, is a case in which the plaintiff was chosen rector by the vestry and in consideration of his services as such an agreement on its part to pay to him a stipulated sum of money a year, and this call and agreement were both recorded among its proceedings. What more does the Act of 1798 require? But it is said the resolution of 3d December fails to comply with the conditions of the act, because it does not fix a definite time for which the plaintiff was chosen rector; that it does not fix a day for the termination of his pastoral relation. This is a question of law to be determined by the terms of the contract itself, and the nature and character of the services to be rendered under it. The plaintiff knew, or in law is presumed to have known, that the vestry in tendering to him the rectorship of the parish was acting in pursuance of the authority conferred on it by the Act of 1798. This we say because there was no other law, civil or canonical in force in this State conferring upon a vestry the power to call a minister, and to contract with him in regard to his tenure as minister. And for the purposes of this case it is altogether immaterial whether the resolution of 3d December be construed as a contract for a definite or an indefinite time. It is immaterial because if it be construed as a contract for a definite time, for a year, then the plaintiff's rectorship terminated at the end of that year. On the other hand, if it be construed as a contract for an indefinite time then it is a contract at will, terminable at any time, at the will of either party. So, in any aspect in which this resolution under which the plaintiff assumed his rectorship may be considered it is, it seems to us, not only a substantial but a literal compliance with the terms and conditions of the act. If it be construed as a yearly contract, a contract for a year, then the defendants had the right beyond question to terminate the pastoral relations on the 1st January, 1891; or if it be construed as a contract at will, they had the right to terminate it any time they might deem it proper.

Now as to the doubt suggested in regard to the incorporation of the vestry of this parish, it is sufficient to say the Act of 1798 declared, in the first place, every vestry elected in pursuance of the provisions of that act to be a corporate body, and then it further provided that the convention of the Protestant Episcopal Church in this diocese may, from time to time, constitute new parishes by dividing or uniting the several parishes then existing, and the vestries of such

parishes elected in pursuance of the act are thereby declared to be incorporated. So all that is necessary to incorporate a vestry under this act, is that the convention of the diocese shall in the first place constitute the parish and then that the parishioners shall elect a vestry; when these conditions are complied with the vestry *ipso facto* becomes a corporate body. And such has been the practice and usage of the Protestant Episcopal Church in the formation of parishes and the incorporation of vestries ever since the Act of 1798 was passed. And the general corporation law, Art. 23, Sec. 217, provides in express terms, that "nothing in this article shall prevent the Protestant Episcopal Church from incorporating the vestries in the several parishes according to the usages of the said church."

The Act of 1798 is not to be found, it is true, in the code. But the code is a codification of the public general laws and the public local laws. This act is neither a public general law nor is it a public local law. It is a mere private act incorporating the vestries of a particular religious denomination, *private corporations*, and being a private law it was not and could not properly be codified as part of the public general laws. It follows from what we have said that the order granting an injunction in this case must be reversed and that the bill filed by the plaintiff must be dismissed.

Order reversed and bill dismissed.

Supreme Court of the District of Columbia,
IN GENERAL TERM.

ELLEN E. BARTLEY v. HARVEY SPAULDING ET AL.

- Where a wall is built in a row of houses the whole of it is not an appurtenance to one of them. The purchaser of such house acquires half of the division wall as a party wall.
- The case of Cochran v. Nailor, 6 Mackey, 590, is re-affirmed. The windows overlooking adjoining premises are to be closed, the frames to be removed, and the space is to be built up just as the rest of the wall was built—not a square patch of work put in, but the bricks are to interlock, and the wall is to be made as solid as a party wall should have been made.

In Equity. No. 11571. Decided June 24, 1892.
The CHIEF JUSTICE and Justices JAMES and BRADLEY sitting.

Mr. Justice JAMES delivered the opinion of the Court:

Mr. E. A. NEWMAN for complainant.
Messrs. HARVEY SPAULDING and WESTEL WILLOUGHBY for defendants.

This was a suit for an injunction requiring

the defendant Spaulding to close certain windows in what is alleged to be a party wall, overlooking the premises of the complainant and interfering directly with her enjoyment and with the privacy of certain rooms in her house. It appears that the complainant and the defendant are owners of two adjoining properties, originally belonging to Alexander R. Shepherd in his subdivision of square 164. The houses were sold at different periods by Shepherd as lots 12 and 13. The defendant claims some peculiar right, on the ground that Shepherd's conveyance of his title was prior to that of complainants, and that in that way it became necessary, in order to save any rights to the party wall so-called to the complainant that there should have been a reservation out of the deed to Spaulding. His claim is that he bought the whole division wall as an appurtenance.

Where a wall is built in a row of houses the whole of it is not an appurtenance to one of them. The purchaser of each house acquires half of the division wall as a party wall. One of the houses runs back further than the other, but stands partly on each lot. The defendant was limited, therefore, to his right in a party wall.

We have already considered this question in the case of *Patrick Cochran v. Washington Sailor*, in 6 Mackey, 580, and the court has no reason to doubt at all the law as there laid down. We there said: "The servitude imposed in *invitum* is to be construed with the utmost strictness. It renders the occupation of another's land lawful only when the wall with which it is occupied satisfies the reason and purpose for which the easement was imposed. The servient owner is compelled to submit to the burden only on the ground that the thing imposed is, in contemplation of law, a benefit equally to him and to the dominant owner; in other words, that it at once stands ready for his enjoyment for all the purposes for which a party wall is intended to serve. These purposes include several uses. It is intended, in the first place, to serve for the support, at any point, of the beams which the servient owner may reasonably have occasion to insert in a supporting wall. This forbids the construction of openings where beams can not be inserted, and support can not be afforded. In the next place, it is intended to serve the purpose of a complete division between adjoining houses. This forbids the construction of spaces in it which do not divide. It is no answer to say

that the dominant owner stands ready to fill up the opening whenever the servient owner desires to use the wall as a party wall. That very statement admits that it had not been meantime a party wall, and the servitude only renders lawful occupation by an actual party wall. The occupation meantime by what is not a party wall is not the enjoyment of an easement, but is simply a trespass.

"If a wall with windows or openings is not a party wall within the intention of the rule, it imposes the servitude of such wall and is therefore a trespass. We have to consider next that the trespass is accompanied in this case with constant circumstances, which caused discomfort and inconvenience to the injured party in the enjoyment of the rest of his land. Windows overlooking his domestic ground diminish the proper enjoyment of the premises and impair their value."

The court then went on to say: "That not only must an opening be closed, but that it must be done in a particular manner, that is to say, the brick work used in closing the openings should not be a mere patch, but should connect with the adjoining wall in the usual manner of a continuous wall." That is to say, it is not to be patch work or a square patch of bricks filled in, because that does not give the support to the wall as it should have as a party wall.

We affirm the injunction granted below with this modification, that these window frames are to be removed, and the space is to be built up just as the rest of the wall was built. Not a square patch of work put in, but the bricks are to interlock and the wall is to be made as solid as a party wall should have been made.

With that addition the decree of the Equity Court is affirmed.

INSURANCE—Beneficiary—Designation.—The Supreme Court of Minnesota held, in the recent case of *Gutterson v. Gutterson et al.*, that where a member of an association holds its certificate or contract to pay a specified sum at his death to such person as he shall designate, and the by-laws of the association give him the power at any time to change the designation, not requiring the consent of the person first designated, the latter has but a bare expectancy, which ceases upon the death of that person during the life of the person so insured.

AN Unfortunate Verdict.—"Sinticed for loife, d'yer say? Arrah, thin, if the Judge had his eyes about him, he might ha' seen that Dinnis was that delicate that he'd never live to sarve out a loife sintince, even if it was only for three years."—*Brooklyn Life*.

New York Court of Appeals.

RUMSEY v. NEW YORK & N. E. RR. CO.

WATER AND WATER COURSE — RIPARIAN RIGHTS — ACCESS — OBSTRUCTIONS — MEASURE OF DAMAGES — EVIDENCE.

1. In an action against a railroad company by riparian owners for damages to their uplands, caused by the construction of defendant's roadbed across plaintiff's water front, and thereby cutting off their access to the river, where it appears that the use of the uplands as a brick yard was discontinued by plaintiff's some years prior to the construction of defendant's road-bed, the proper measure of damages cannot be based on the rental or usable value of the property for a brick yard but is the diminished rental or usable value of the property as it is, in consequence of the loss of access to the river.
2. Evidence as to the rental value of the uplands without defendant's roadbed is competent, but insufficient, to establish the legal measure of damages, in the absence of other evidence of the rental or usable value of such uplands with the road-bed.
3. In such case, evidence offered by defendant to prove the additional expense caused by the construction of defendant's road-bed, of shipping bricks to market on the river was improperly excluded.
4. The owner of land on a public river is entitled to such damages as he may have sustained as against a railroad company that constructs its road across his water front, and deprives him of access to the navigable part of the stream, unless the owner has granted the right, or it has been obtained by the power of eminent domain. 15 N. Y., 509, reversed.

Decided April 12, 1892.

APPEAL from the Supreme Court, General Term, Second Department. Action for damages for obstructing plaintiff's means of access to the Hudson River. From a judgment of the General Term affirming a judgment of the Special Term for plaintiffs, defendant appeals.

Mr. Justice O'BRIEN delivered the opinion of the Court:

This appeal involves two important questions : (1) The rule of damages applicable generally to such cases ; and (2) the right of plaintiffs to recover anything for the period prior to March 3, 1885. The plaintiffs are, and for more than twenty years have been, the owners of about forty acres of land on the east bank of the Hudson River at Fishkill, bounded on the west by the river, and covering about one thousand feet of the river front. It also appears that on the 3d of March, 1885, the State, pursuant to a resolution of the commissioners of the land office, granted to the plaintiffs the lands under water, adjacent to and in front of the uplands, from high-water mark westerly to the channel bank of the river, excepting therefrom the rights of the New York Central and Hudson River Railroad Company. This railroad, it

seems, was constructed across the water-front prior to or about the year 1854, and since that time the plaintiffs and their grantors have used a strip of land, leading from the uplands through a culvert under the Hudson River Railroad to the channel of the river, for loading vessels with brick made on the premises, and for all purposes connected with the manufacture of brick on the premises, with the consent of the Hudson River Railroad, until such use was obstructed by the building of the defendant's road-bed. This was built in the years 1880 and 1881, outside and nearly parallel with the road-bed of the Hudson River road, in front of the culvert above described, and along the whole river front of plaintiff's land without any right or authority from the plaintiffs or their grantors. The effect of this was to cut off the plaintiffs from access to the river from their land. The plaintiffs' title to the uplands and the land under water, where the defendant's road is built, has been determined in their favor by the decisions of this court. Rumsey v. Railroad Co., 114 N. Y., 423 ; 125 Id., 681. The principles applicable to actions of an equitable character to restrain the operations or maintenance of such structures, when the facts amount to a continuing trespass against the rights of adjacent property-owners, are not involved, as the plaintiffs have not adopted that form of obtaining relief. Galway v. Railroad Co., 128 N. Y., 132 ; Uline v. Railroad Co., 101 Id., 98.

In this action the plaintiffs seek to recover damages to their uplands sustained by the act of the defendant in constructing its road bed across the plaintiffs' water front, and thereby cutting off their access to the river, and such damages are claimed from the time of the construction of the railroad to the commencement of the action. The court assessed the damages at \$10,500. This result was reached upon the theory that the use of the plaintiffs' premises for the purpose of a brick yard had been depreciated to that extent in consequence of the construction of defendant's road. At the same time the court found that the culvert, as a passage way, was discontinued about the year 1875, and the dock, at the westerly end of the culvert, was allowed to go to decay, as was also the causeway which connected the dock with the brick yard ; that the plaintiffs' lands had no buildings or machinery on them to fit them for use for brick making purposes, and that they had been in this situation since the year 1875, and that the defendant had in no wise injured the plaintiffs' lands except only to prevent or delay the sale of the clay thereon

for brick making purposes. It appears therefore from these findings that the use of the premises for brick making or as a brick yard had been discontinued six years before the defendant's road was built. The plaintiffs asked to recover in this action only such damages as they have sustained, up to the commencement of the action, by reason of the acts complained of. As a basis for the estimate, the land must be taken as it was used during the time embraced in the action. It does not appear that the use of the premises as a brick-yard was discontinued in consequence to the acts of the defendant, and that fact could not well be established, for it ceased to be used for such purpose long before the defendant's road was built. The proper measure of damages in such a case is the diminished rental or usable value of the property as it was, in consequence of the loss, by defendant's acts, of access to the river, in the manner enjoined by the owner prior to the construction of the embankment across the water-front by the defendant. The plaintiffs cannot be permitted to prove or allowed to recover damages that they might have sustained if they had put the property to some other use or placed other structures upon it. *Tallman v. Railroad Co.*, 121 N. Y., 119. The damages could not be based upon the rental or usable value of the property for a brick-yard, any more than they could be based upon their use for some other specific or particular purpose to which they were not in fact put by the owners. The question is, what damages did the plaintiffs in part suffer by having the access to the river cut off? not what they might have suffered had the land been devoted to some particular use to which it was not put.

The proof of damages on the part of the plaintiffs consisted entirely of the opinions of witnesses as to the rental value of the land in the absence of the structure built by the defendant. This proof was competent as far as it went, but it did not establish the legal measure of damages. It should also have been shown what was the rental or usable value of the premises as they were with the obstruction which interfered with the access to the river, as the difference in these two sums represented the actual loss caused by the defendant's acts.

The defendant offered to prove the additional cost of shipping brick to market upon the river, rendered necessary by the construction of the embankment. This testimony was objected to by plaintiffs, and excluded by the court, to which the defendant excepted. This ruling was erroneous. The additional expense, caused

by the defendant's structure in the river, of transporting brick, or any other product of the land, to market, was an important element of the damage sustained, and the defendant should have been permitted to prove the facts in that regard, at least by way of answers to plaintiff's theory of damages. The method adopted of establishing the plaintiffs' damages therefore demands a reversal of the judgment.

The plaintiffs were permitted to recover for more than four years prior to their grant of the land under water, on the 3d of March, 1885.

During this period the plaintiffs' rights were those of ordinary riparian owners on the banks of navigable rivers. They owned the uplands bounded by the river, and as such owners had the right under the statute to apply to the commissioners of the land office for a grant of land under water in front of their premises. In this respect, and on this branch of the case the facts are identical with those in the case of *Gould v. Railroad Co.*, 6 N. Y., 522. If that case is to be followed, the plaintiffs cannot recover any damages prior to March 3, 1885. It was there held that the owner of lands on the Hudson river had no private right or property in the waters or the shore between high and low-water mark, and therefore is not entitled to compensation from a railroad company which, in pursuance of a grant from the Legislature, constructs a railroad along the shore, between high and low-water mark, so as to cut off all communications between the land and the river otherwise than across the railroad. It is believed that this proposition is not supported by any other judicial decision in the State, and if we were dealing with the question now as an original one, it would not be difficult to show that the judgment in that case is a departure from precedent and contrary to reason and justice. It is no doubt true that even a single adjudication of this court, upon a question properly before it, is not to be questioned or disregarded except for the most cogent reasons, and then only in a case where it is plain that the judgment was the result of a mistaken view of the condition of the law applicable to the question. But the doctrine of *stare decisis*, like almost every other legal rule, is not without its exceptions. It does not apply to a case where it can be shown that the law has been misunderstood or misapplied, or where the former determination is evidently contrary to reason. The authorities are abundant to show that in such cases it is the duty of courts to re-examine the question. Chancellor Kent, commenting upon the rule of *stare decisis*, said

that more than a thousand cases could then be pointed out, in the English and American reports, which had been overruled, doubted or limited in their application. He added that "it is probable that the records of many of the courts of this country are replete with hasty and crude decisions, and in such cases ought to be examined without fear, and revised without reluctance, rather than to have the character of our law impaired, and the beauty and harmony of the system destroyed, by the perpetuity of error." 1 Kent Com., 13th Ed., 477; Broom Leg. Max., 153; Gifford v. Livingston, 2 Den., 392; Morse v. Goold, 11 N. Y., 281; Judson v. Gray, Id., 408.

The Goold case has been frequently criticised and questioned, and it is believed has never been fully acquiesced in by the courts or the profession as a decisive authority or a correct exposition of the law respecting the rights of riparian owners. *Kane v. Railroad Co.*, 125 N. Y., 184.

The learned judge who gave the prevailing opinion in the case assumed, as the foundation of his argument that the question was conclusively determined by the Supreme Court adverse to the plaintiff in *Lansing v. Smith*, 8 Cow., 146, subsequently affirmed in the Court of Errors, 4 Wend., 9. That case grew out of the construction of the canal basin at Albany, a public improvement to promote commerce and navigation; and the question was, whether as against such an improvement, the plaintiff's right to the use of his dock and water-front, as he had enjoyed it before, was exclusive. It may be conceded that the sovereign power in a work for the improvement of the navigation of a public river may incidentally interfere with the enjoyment and use of the water-front by riparian owners, but the power to grant to a private individual or corporation the right to cut such owner off entirely from communication with the stream, without compensation, is quite another and different question. There is really no authority in *Lansing v. Smith* for the support of such a proposition. On the contrary, as was pointed out by Judge Andrews in the *Kane Case*, supra, that question was excluded from the discussion, as the chancellor who delivered the opinion was careful to say: "Whether the Legislature could grant the right to any other person to build a wharf in front of the plaintiff, so as to destroy his entirely, is a question which is not necessary now to discuss."

It is not necessary to refer at much length to the numerous cases and abundant learning to be found in the books respecting the rights

of riparian owners. The authorities on the general subject are not all in harmony, and we are now concerned with but a single branch of an important and somewhat complicated subject, namely, the right of such owner, as against some other private interest, to have access to and enjoy the use of the highway.

It may be observed, however, that since the decision of the Goold Case, in 1852, this question, and questions of a kindred nature, have been elaborately examined, discussed and settled in this court, in our highest Federal tribunal, in the court of last resort in England, and in the highest courts of several of our sister States. The doctrine of that case has been repudiated or ignored in these decisions, and the rights of proprietors of lands upon rivers and public highways determined upon principles more in accord with reason and justice. The long line of decisions in this court, from the Story Case, 90 N. Y., 122, to the *Kane Case*, 125 Id., 164, hold that an owner of land abutting upon a public street has a property right in such street for the purpose of access, light and air, and that the State has no power to grant to a railroad the right to occupy the street, when such occupation injuriously affects the enjoyment, by the property-owner, of such rights, except by the exercise of the power of eminent domain, and when a street is thus used by the railroad, without condemnation proceedings or a grant from the property-owner, it is responsible to him for any damages resulting therefrom. Unless there is some distinction to be made between the rights which pertain to an owner of land upon a public river and one upon a public street, which is not perceived, then the principles sanctioned by this court in these cases virtually overrule the Goold Case, as they are apparently irreconcilable.

The question respecting the rights of riparian owners in such a case was determined in the Supreme Court of the United States in *Yates v. Milwaukee*, 10 Wall., 497. Mr. Justice Miller in delivering the opinion of the Court, stated the law clearly, as determined by that court: "But whether the title of the owner of such a lot extends beyond the dry land or not, he is certainly entitled to all the rights of a riparian proprietor whose land is bounded by a navigable stream, and among these rights are access to the navigable part of the river from the front of his lot, the right to make a landing, wharf or pier for his own use or for the use of the public, subject to such general rules and regulations as the Legis-

lature may see proper to impose for the protection of the rights of the public, whatever they may be. * * * This riparian right is property, and is valuable, and though it must be enjoyed in due subjection to the rights of the public, it cannot be arbitrarily or capriciously destroyed or impaired. It is a right of which when once vested, the owner can only be deprived in accordance with the established law, and if necessary that it be taken for the public good, upon due compensation." St. Louis v. Rutz, 138 U. S. 246.

In England it was held quite recently that the owner of an estate on the tide-waters of the Thames was entitled to compensation, not only for the land actually taken, under the authority of a statute, for the construction of a public road along the shore, which cut off the owner's access to the river, but also for the permanent damage to the whole estate in consequence of its change by the improvement from river-side to road-side property, including his individual and particular right to use the shore of the river. Buccleuch v. Board, L. R., 5 H. L., 418. In nearly all of our sister States where the question has arisen the same or substantially similar rules have been adopted. Ashby v. Railroad Co., 5 Metc. (Mass.), 388; Providence Steam-Engine Co. v. Providence & S. S. S. Co., 12 R. I., 357; Chapman v. Railroad Co., 33 Wis., 629; Delaplaine v. Railroad Co., 42 Id., 214; Holton v. Milwaukee, 31 Id., 38; Brisbane v. Railroad Co., 23 Minn., 114.

The case of Stephens v. Railroad Co., 34 N. J. Law, 532, in which a contrary rule was adopted, was decided largely upon the authority of the Goold Case, and that of Buccleuch v. Board, L. R. 5 Exch., 221, which, as we have seen, was subsequently reversed in the House of Lords. Gould Waters, Sec. 151. It must now, we think, be regarded as the law in this State that an owner of land on a public river is entitled to such damages as he may have sustained as against a railroad company that constructs its road across his water-front, and deprives him of access to the navigable part of the stream, unless the owner has granted the right, or it has been obtained by the power of eminent domain. This principle cannot of course be extended so as to interfere with the right of the State to improve the navigation of the river, or with the power of Congress to regulate commerce, under the provisions of the Federal Constitution. The plaintiffs were therefore entitled to recover such damages as they could prove to have been sustained by them prior to March 3, 1885, but on account of the erroneous rules adopted for determining the damages above pointed out, the judgment must be reversed, and a new trial granted, costs to abide the event.

All concur.

Supreme Court of Texas.

ANDERSON v. WESTERN UNION TELEGRAPH COMPANY.

TELEGRAPH COMPANIES—FAILURE TO DELIVER MESSAGE—JOINDER OF ACTIONS—USE OF BLANKS—NOTICE OF CLAIM.

1. In an action by a father and son against a telegraph company for damages for its failure to deliver certain messages, it appeared that the father and his two sons resided at D.; that the father was at work at the county poor farm to satisfy a fine at H.; that his son J. died, and that the other son, S., telegraphed to the manager of the poor farm, informing him of the death; that the constable to whose custody the father had been remanded, sent a message to such manager to release the father on account of the death; that thereafter, on the same day, S. sent another message to such manager. The charges on the three messages were paid, and were received by the company's agent at H., but the messages were not delivered until the following day, when the father was immediately released. By reason of the delay, he was unable to reach D. before the burial of his son. Held, that the father's and S's causes of action could not be joined.
2. The company answered that the messages were written on blanks, which had thereon printed stipulations that messages would be delivered free within the established free delivery limits of the terminal office; that for a greater distance a special charge would be made to cover the cost of delivery; that the person to whom the messages were addressed did not reside within the free delivery limits at H., which were one-half mile each way from the company's office; and that no charges were paid or guaranteed for special delivery. Held, that the answer stated a good defense.
3. Where it was shown that the constable's telegram was not written on one of the company's blanks, and it did not appear that it was pinned to one of such blanks with his knowledge, or the knowledge of the person by whom it was sent to the company's office, it was error to refuse to admit it in evidence, detached from the blank form to which it had been so pinned.
4. Since the constable's telegram secured the father's release, and the failure to deliver it was the gist of the action, the company having received it without stipulating that notice of a claim for damages should be made within 60 days, the father's claim for such damages was not barred, although no notice of such claim was given within 60 days.

Decided March, 1892.

COMMISSIONERS' decision. Section B. Appeal from the District Court, Dallas County.

Action by T. W. Anderson and S. E. Anderson against the Western Union Telegraph Company to recover damages for defendant's failure to promptly transmit and deliver certain messages. From a judgment on a verdict for defendant, plaintiffs appeal. Reversed.

Mr. Justice GARRET, delivered the opinion of the Court:

This action was brought by the appellants, T. W. Anderson and his minor son S. E.

Anderson, in the district court for the fourteenth district of Dallas County, for the recovery of damages for the failure to promptly transmit and deliver certain telegraphic messages. Defendants pleaded, by a special demurrer, a misjoinder of the parties and causes of action. It also demurred generally, denied generally, and answered specially that the messages were written on the blanks of the company, which had thereon printed stipulations that the messages would be delivered free within the established free delivery limits of the terminal office and for a greater distance a special charge would be made, to cover the cost of delivery; that the person to whom the messages were addressed did not reside within the free delivery limits at Hutchins, the place to which they were addressed, which were one-half mile each way from the defendant's office, and that no charges were paid or guaranteed for special delivery; further, that the defendant should not be liable for damages unless the claim therefor, in writing, was made of it within 60 days after sending the message, and that no such demand had been made. Plaintiffs' demurrer to the answer was overruled. Defendant's plea of misjoinder of parties and causes of action was sustained. It is not disclosed by the record as to when the election was made for the further prosecution of the suit, as the judgment is that both plaintiffs take nothing by their suit. At the request of the defendant the court instructed the jury to return a verdict in its behalf, which was done, and judgment was entered thereon. Plaintiffs perfected an appeal to the supreme court, and assigned errors.

Substantially, the facts are that on the 4th of August, 1888, the appellant, T. W. Anderson, was at work at the Dallas County poor farm, of which D. C. Burgers was the manager, to satisfy a fine and costs adjudged against him in a justice's court. His residence was in the city of Dallas, and his family was only two sons, S. E. Anderson, one of the plaintiff's, aged 16 years, and J. T. Anderson, aged 11 years. About 7 o'clock a. m., on the day mentioned the son J. T. Anderson died in Dallas, after an illness of about seven hours, and the father had not been advised of his illness. Soon after the death of his brother, and at about 9 o'clock a. m., the plaintiff S. E. Anderson delivered to the defendant's agent at Dallas a message to be immediately transmitted and delivered to D. C. Burgers, at Hutchins, as follows:

"Dallas, Texas, 8—4, 1888. To D. C. Burgers, manager poor farm, Hutchins, Texas: T. W.

Anderson's child died seven a. m. to-day. S. E. ANDERSON." He paid the charge therefor, and the dispatch was sent and received by the defendant's agent at Hutchins. At about 10 o'clock a. m. on the same day the said S. E. Anderson procured Louis Jacoby, the constable to whose custody his father had been remanded, to send instructions to the manager to release him, which were telegraphed as follows: "Dallas, Texas, 8—4, 1888. To D. C. Burgers, Hutchins, Texas: Release T. W. Anderson. One of his boys died this morning. LOUIS JACOBY, constable."

This dispatch was also paid for and sent and received by the defendant's agent at Hutchins. Not hearing from the others, he also sent another telegram during the same day, as follows: "To D. Burgers, manager poor farm, Hutchins: Dear Sir: Send T. W. Anderson here immediately. His child died seven o'clock this morning. Answer. S. E. ANDERSON." And for this he also paid the charges, and it was sent to defendant's agent at Hutchins. Hutchins is 10 miles from Dallas and the poor farm is one mile from the office of defendant at Hutchins. Burgers had an agreement with defendant's agent at Hutchins to send his messages out to him. The three messages sent to him for the use of T. W. Anderson were delivered at about 12.15 a. m., August 5th; and he immediately released Anderson. There was no train passing for Dallas until the next morning; and if the first message of the day previous had been promptly delivered, he could have reached Dallas at 12 m. on that day. The night was dark and Anderson's eyesight was so bad that he could not walk in the night; and the next morning the train was delayed, and he did not reach Dallas until about 12 o'clock—too late to be in time for the burial of his son. There was no evidence as to what the established delivery limits at Hutchins were. It was shown that notice of plaintiffs' claim for damages was not given within 60 days. If the first message had been delivered promptly, Anderson could have reached Dallas 18 hours earlier; but not any earlier upon the third message.

There was no error in sustaining the defendant's plea of misjoinder of parties and causes of action. It is doubtful if any cause of action at all is shown in behalf of the son, S. E. Anderson, but the petition does show a good cause of action in favor of the father. At least, they could not be joined.

Plaintiffs' exception to the defendant's answer was properly overruled; for, if true it

ses up a good defense. But, it having been shown that Jacoby's message was not written on one of the defendant's blanks, and it not having been shown by the defendant that it was pinned to the blank with Jacoby's knowledge, or the knowledge of the person by whom he sent it to the office, if he sent it, it should have been admitted in evidence without the stipulations contained in the printed form. The message was the one that secured the release of Anderson, and the failure to deliver it was the gist of plaintiffs' action; and the defendant having received it without stipulation as to free delivery limits, or that notice of claim for damages should be given within 60 days, it would be bound to exercise due care in the delivery of the telegram to the person to whom it was addressed; and if it had a regulation at Hutchins with regard to free delivery limits, and it was found that Burgers resided beyond those limits, it was the duty of the company, at least, to notify the sender of the dispatch that it could not be delivered without an additional charge. The sender of a message cannot be bound by a regulation which is not brought to his knowledge. The defendant accepted the message, and undertook to deliver it to Burgers; and it will not be heard to excuse itself upon the ground that Burgers was more than one-half of a mile from the office at Hutchins, especially since it failed to notify the sender of the fact that the message had not been delivered, and of the reason why, so that its prompt delivery could have been secured. Again, it was the duty of the defendant to have complied with its agreement to send the messages addressed to Burgers out to him if there was one to that effect.

It has been held that a stipulation to the effect that the person who claims to have been injured by the failure of the company to perform its duty in sending a telegram must give notice to the company of his claim for damages within 60 days, is a reasonable regulation; but as Jacoby made no such agreement, it was not necessary that the notice should have been given in this case.

With respect to the other two telegrams, it does not appear from the bill of exceptions under what circumstances the messages were written by Marshall, who was the agent of the defendant; and we cannot say that in doing so he was not the agent of young Anderson to prepare them, and that the latter did not have an opportunity to read the printed stipulations on the blank.

The court erred in refusing to admit the Jacoby message, as it was originally prepared, detached from the form to which, as produced by the defendant, it was pinned; and for this error the judgment of the court below should be reversed.

PER CURIAM. Reversed as per opinion of commission of appeals.

THE COURTS.

Supreme Court of the District of Columbia.

AT LAW—New Suits.

July 15, 1892.

33050. R. P. Anderson v. Jno. Reid. Ejectment. F. H. Mackey. Defts. attys., Ralston & Siddons.

33051. J. C. Addison v. I. L. Johnson. Account, \$295. Pliffs. atty., W. H. Sholes.

33052. Mary F. Hoffman v. M. I. Weller et al. Ejectment. Pliffs. atty., A. B. Duvall. Defts. attys., Edwards & Barnard.

33053. M. Jos. Muth, et al. v. Harry Standiford. Account, \$249.33. Pliffs. atty., J. H. Lichliter. Defts. atty., W. W. Flemming.

33054. Madeline Hamilton v. G. W. Walter. Account, \$506. Pliffs. atty., C. Carrington. Defts. atty., H. W. Garnett.

33055. Jas. Edward Chapman v. W. J. Dante. Note, \$900. Pliffs. attys., Carusi & Miller. Defts. atty., T. H. Fitnam.

33056. Johnson Bros. v. Morgan Ross. Account, \$105.70. Pliffs. atty., S. T. Thomas.

33057. Johnson Bros. v. W. E. Prall. Note, \$125. Pliffs. atty., S. T. Thomas.

33058. Sarah Maud Hofner v. C. M. Matthews et al. Ejectment. Pliffs. atty., Robert Christy. Defts. atty., H. S. Matthews.

33059. Jno. Maloney v. Liberi Spugnardi. Ejectment. Pliffs. attys., F. H. Mackey and C. C. Tucker. Defts. atty., E. A. Newman.

33060. Sophia W. Mechlin v. Salvatore Desio. Damages, \$5,000. Pliffs. attys., Webb & Webb. Defts. attys., Lipscomb & Woodard.

33061. The National Metropolitan Bank v. Cassius Anstell, et al. Note, \$250. Pliffs. atty., N. Wilson.

Legal Notices.

Rule of Court.

RULE 20. * * * * Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

FIRST INSERTION.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 16th day of July, 1892.

Jacob P. Printz, Plaintiff,
vs.
Frederick H. Saunders, Defendant. { At Law. No. 32,958.

On motion of the plaintiff, by Mr. Wm. Meyer Lewin, his attorney, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty (40) days after this day; otherwise the cause will be proceeded with as in case default.

The object of this suit is to subject to the satisfaction of plaintiff's claim certain credits of the defendant attached herein.

By the court: M. V. MONTGOMERY, Asso. Justice.
True copy. Test: J. E. Young, Clerk.

Legal Notices**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of HERMAN PANTHER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of July, 1892.

RICHARD SYLVESTER,
29 Police Dept., D. C.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of MARY K. LENTHAL, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of June, 1892.

THOS. E. WAGGAMAN.

29 Irving Williamson, Proctor.

This is to Give Notice

That the subscriber, of District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of SAMUEL F. LOMAX, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of July, 1892.

ELIZABETH LOMAX,
29 D. O'C. Callaghan, Proctor. No. 634 F St. s. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business,

July 16, 1892.

In the case of Robert Farnham, executor of JANE FARNHAM, deceased, the executor aforesaid has, with the approval of the court, appointed Friday, the 12th day of August, A. D. 1892, at 11 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: L. P. WRIGHT,
29 Register of Wills for the District of Columbia.

No. 443. Ad. D. 16. Henry Wise Garnett, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business,

July 16th, 1892.

In the case of Samuel C. Palmer, executor of ANN JONES, deceased, the executor aforesaid has, with the approval of the court, appointed Friday, the 2d day of September, A. D. 1892, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: L. P. WRIGHT,
29 Register of Wills for the District of Columbia.

No. 3015. Ad. Doc. 14. Eodoiphe Clauthon, Proctor.

Legal Notices**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,**
Holding a Special Term for Orphans' Court Business,

This 16th of July, 1892.

In re estate of MARGARET A. WASHINGTON, late of Washington, D. C. No. 5086. Admn. Doc. 18.

Application having been made for the probate of a paper-writing propounded as the last will and testament, and for letters testamentary on the estate of said Margaret A. Washington, deceased, by Hobert James:

Notice is hereby given to all concerned to appear in this court on Friday, August 12, 1892, at 11 o'clock a. m., to show cause, if any exist, against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter once a week in each of three successive weeks before said day.

By the Court: A. C. BRADLEY, Justice.
A true copy. Teste. L. P. WRIGHT, Reg. of Wills, D. C.
29 Leigh Robinson, Proctor for applicant.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 21st day of July, 1892.

George D. Todd
v. { No. 14,022. Eq. Docket 34.
Cornelius Courtney et al.

On motion of the plaintiff, by Messrs. J. J. Johnson and William B. Todd, her solicitors, it is ordered that the defendants, ELLEN COURTNEY, ELLA COURTNEY, LIZZIE COURTNEY, FENTON BICKS and —— BICKS, her husband, and EMMA JENKINS and FLEET JENKINS, her husband, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this date; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a deed of release of sub lot F in square five hundred and ninety (590), in the city of Washington, in the District of Columbia.

This notice to be published in the Washington Law Reporter and the Washington Post.

By the Court: A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk.
29 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Patrick J. McEvoy, Plaintiff, { At Law. No. 82,980.
John A. Gerrits, Defendant. vs.

On motion of the plaintiff, by H. W. Sohon, his attorney, it is on this 16th day of July, 1892, ordered that the defendant, JOHN A. GERRITS, cause his appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

Provided this order be published three times in the Washington Law Reporter previous to said rule-day.

M. V. MONTGOMERY, Justice.
True copy. Test: J. R. Young, Clerk.
29 By H. W. Hodges, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term in Equity.

John T. Easton et al., Complainants, { No. 12,920. Eq.
John W. Easton and another, Defendants. vs.

George Gibson, the trustee appointed to sell the property set forth in the proceedings, being the north 30 feet by a depth of 75 feet, of lot 208, in Beatty and Hawkin's addition to Georgetown, D. C., having reported to said court the sale of said place on 18th July, 1892, to Wilhelmina Bernau for \$1,885, and that she has complied with the terms of sale.

Therefore, it is ordered this 16th day of July, A. D. 1892, by said court, that said sale be and hereby is ratified and confirmed, unless cause to the contrary be shown on or before the 16th day of August next.

Provided a copy of this order be published in the Washington Law Reporter once a week for three weeks previous to said day.

A. C. BRADLEY, Justice.
A true copy. Test: J. R. Young, Clerk.
29 By M. A. Clancy, Asst. Clerk.
[Filed July 16, 1892. J. R. Young, Clerk.]

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of JOHN GRINDER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of July, 1892.

EDWARD M. GRINDER,
29 Joseph J. Darlington, Proctor. 1001 First St. n. e.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of FRANK WILD, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of July, 1892.

CATHERINE E. WILD,
29 S. T. Thomas, Proctor. 723 23d St. n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of CHARLES HALL, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of July, 1892.

CHAPIN BROWN,
29 328 4½ St. n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of JOHN HOELMANN, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of July, 1892.

LOUIS H. HOELMANN.
Cr. CHAS. A. WALTER,
29 Chas. A. Walter, Proctor. 444 D St. n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

Equity. No. 7186.

Guy V. Henry v. A. Thomas Bradley, Trustee, Christopher C. Walcott, Elizabeth W. Walcott, Maria G. Bradley, and Richard B. L. Macrea, Guardian, et al.

On motion of the plaintiff, Guy V. Henry, by his solicitor, O. D. Barrett, it is this 16th day of July, 1892, ordered that the defendants, CHRISTOPHER C. WALCOTT, ELIZABETH W. WALCOTT, MARIA G. BRADLEY, and RICHARD B. L. MACREA, guardian of POWELL M. BRADLEY, FREDERICK W. BRADLEY and MARIA G. BRADLEY, cause their appearance to be entered herein on or before the first special term commencing forty days after the date of this order; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to revive the suit of Smith Thompson and others vs. A. Thomas Bradley, trustee, and others. Equity No. 7186, as to the interest claimed by the plaintiff, Mrs. Arietta L. Henry, now deceased, in the name of Guy V. Henry, sole heir at law of said Arietta L. Henry, deceased.

A true copy. Test: A. C. BRADLEY, Justice.
J. R. Young, Clerk.
By M. A. Clancy, Asst. Clerk.

Legal Notices.**SECOND INSERTION.****IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,**

The 9th day of July, 1892.

John H. Walter et al. } vs. Law. No. 32,968.
William G. Budington.

On motion of the complainants by W. Mosby Williams and John Ridout, their attorneys, it is ordered that the defendant WILLIAM G. BUDINGTON, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this action of ejectment is to obtain a judgment for the possession of part of original lot numbered (2) in square numbered eight hundred and forty-three (843) in the city of Washington, District of Columbia, as described and alleged in the declaration.

True copy. Test: J. R. Young, Clerk.
28 By H. W. Hodges, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

The 12th day of July, 1892.

Thomas H. Wright, et al. trustees of the Metropolitan A. M. E. Church vs. Wm. Pierce Bell, trustee, et al. defendants.
No. 12,962. Equity Docket 53.

On motion of the plaintiffs, by Mr. Thos. B. Warrick, their solicitor, it is ordered that the defendant, WILLIAM PIERCE BELL, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to secure a release of a deed of trust to said defendants BELL and ISAAC L. JOHNSON, dated 22d day of November, A. D. 1881, and recorded in Liber 882, folio 448, of the land records of the District of Columbia.

By the Court: A. C. BRADLEY, Justice, &c.
True copy. Test: J. R. Young, Clerk.
28 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

The 9th day of July, 1892.

John H. Walter et al. } vs. Law. No. 32,968.
Thomas G. Budington.

On motion of the complainants by W. Mosby Williams and John Ridout, their attorneys, it is ordered that the defendant THOMAS G. BUDINGTON, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this ejectment is to obtain a judgment for the possession of part of original lot numbered two (2) in square numbered eight hundred and forty-three (843) in the city of Washington, District Columbia, as described and alleged in the declaration.

True copy. Test: J. R. Young, Clerk.
28 By H. W. Hodges, Asst. Clerk.

DISTRICT OF COLUMBIA, SCT.—THIS IS TO GIVE NOTICE
to whom it may concern, in accordance with the statute in such case made and provided, that the subscriber this SEVENTH DAY OF JULY, A. D. 1892, has filed her petition in the Supreme Court of the District of Columbia, in substance setting forth that she is a resident of said District, and for more than five years last past she has been a member of the family of, and supported by her stepfather, whose surname she has assumed, and by that name during said period she has been known, &c.; and the prayer of said petition is that the court will pass its decree changing her name to Harriette Chapman Neale.

HARRIETTE E. ELLMAKER,
By ALICE R. NEALE, her next friend.

28 Andrew B. Duvall, Solicitor.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

David C. Reeves et al. { Equity. No. 13,904.
vs.
James Reeves et al.

The trustees James Westerfield and David C. Reeves, having reported to the court the sale at public auction of the real estate described in the decree appointing them trustees, the same being part of original lot 9 in square 567, said part being sold in two parcels, the whole fronting 36 feet on New Jersey Ave. and running back at right angles with said avenue the full depth of said lot 9; said real estate being sold to George E. Moore as agent for Martha V. Moore, for \$7,500; and also the sale at public auction of lot 8 in Naylor and Rothwell's subdivision of square 422 (being described in the bill as lot 8) to Edw. S. Smith for \$4,145, and the same having been considered, it is, by the Court, this 11th day of July, A. D. 1892, adjudged, ordered and decreed that said sales be ratified and confirmed unless cause to the contrary be shown on or before the 11th day of August, A. D. 1892.

Provided that a copy of this decree be published in the Washington Law Reporter and Evening Star once in each of three (3) successive weeks prior to the said date.

28 A true copy. Test: A. B. HAGNER, Justice.
J. R. Young, Clerk, &c.
[Filed July 11, 1892. J. R. Young, Clerk.]

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of SAMUEL SCOTT, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of June, 1892.

J. B. BUCKLEY.

28 Smith & Albright, Proctors. Cor. of 19th & T Sts., n. w.

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of MARIA BARCROFT, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of July, 1892.

CHAPIN BROWN,
323 4½ St., n. w.

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of RICHARD WHITNEY MOORE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day of July, 1892.

LAURA A. WHITNEY,
Cr. HENRY WISE GARRETT.

28 Henry Wise Garnett, Proctor.

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of MELANCTHON L. RUTH, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 24th day of June, 1892.

HENRY WISE GARRETT,
Atty. at Law.

28

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,**

Holding a Special Term for Orphans' Court Business.

July 8, 1892.

In the case of Mary J. Jones, Executrix of SINGLETON T. W. JONES, deceased, the executrix aforesaid has, with the approval of the court, appointed Friday, the 12th day of August, A. D. 1892, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the executrix will take the benefit of the law against them.

Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: L. P. Wright,
28 Register of Wills for the District of Columbia.
No. 4435. Adm. Doc. 18. Chas. H. Cragin, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business.

This 8th of July, 1892.

In re estate of RICHARD GUNDLACH, late of Washington, District of Columbia. No. 5082. Adm. Doc. 18.

Application having been made for letters of administration on the estate of said Richard Gundlach, deceased, by Edward Kolb, notice is hereby given to all concerned to appear in this court on Friday, August 5, 1892, at 11 o'clock a. m., to show cause if any exist against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter once in each of three successive weeks before said day.

By the Court: A. C. BRADLEY, Justice.
A true copy, Teste: L. P. WRIGHT, Reg. of Wills, D. C.
28 B. W. Lacey, Proctor for applicant.

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IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Mary Gaghan et al. { Equity. No. 13,523.

Thomas Gaghan et al. vs.

Upon consideration of the report of the trustee, this day filed, it is this 9th day of July, A. D. 1892, ordered by the court that the sale so reported be ratified and confirmed unless cause to the contrary thereof be shown on or before the 10th day of August next.

Provided a copy of this order be inserted in the Washington Law Reporter once a week for three weeks before said day.

A. C. BRADLEY, Justice.
A true copy. Test: J. R. Young, Clerk.
28 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

James M. Love, Guardian { Equity. No. 13,935.
vs.
James M. Love, Jr., et al.

Upon consideration of the trustee's report of sale this day filed, it is this 11th day of July, A. D. 1892, ordered by the court, that said sale so reported, be ratified and confirmed unless cause to the contrary thereof be shown on or before the 11th day of August next.

Provided a copy of this order be inserted in the Washington Law Reporter once a week for three weeks before said day.

A. B. HAGNER, Justice.
A true copy. Test: J. R. Young, Clerk.
28 By M. A. Clancy, Asst. Clerk.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

The 9th day of July, 1892.

John H. Walter et al. }
 vs. Law. No. 32,970.
 Mary J. Wilcox et al. }

On motion of the complainants by W. Mosby Williams and John Ridout, their attorneys, it is ordered that the defendants, MARY J. WILCOX and GEORGE WILCOX, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this action of ejectment is to obtain a judgment for the possession of part of original lot numbered two (2) in square numbered eight hundred and forty-three (843) in the city of Washington, District of Columbia, as described and alleged in the declaration.

True copy. Test: J. R. Young, Clerk.
 By H. W. Hodges, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

On the 18th day of July, 1892.

Wilhelmine Bowman and Louisa Donaldson
 vs.

Joseph W. Davis et al.
 Equity No. 14,058.

On motion of the plaintiffs by Mr. Tallmadge A. Lambert, their solicitor, it is ordered that the defendants, James W. Cromwell, Lottie Cromwell Davis, Clara R. Davis and Kate Davis Pulitzer cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to substitute a trustee or trustees in the place of William D. Cassin and James L. Davis, both deceased.

By the Court: A. C. BRADLEY, Justice, &c.
 True Copy. Test: J. R. Young, Clerk, &c.
 By L. P. Williams, Asst. Clerk.

THIRD INSERTION.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

The 6th day of July, 1892.

Carrie C. At Lee et al. }
 vs. No. 14,019. Equity Docket 34.
 Wm. Edward Paine et al.

On motion of the complainants, by Mr. George Francis Williams, their solicitor, it is ordered that the defendants, WILLIAM EDWARD PAYNE, BOSTON BALDOCK, PONCE (otherwise Poncia) BALDOCK, FRANK BALDOCK and his wife ANNA BALDOCK, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to so reform a certain deed from the ancestors of defendants, as to perfect the title of complainants to the south 18 feet by 88 feet or lot 6 in square 525, in the City of Washington, in said District.

By the Court: A. C. BRADLEY, Justice, &c.
 A true copy. Test: J. R. Young, Clerk.
 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

Anna Sands }
 vs. Equity, No. 14,021.
 Ellen Heffernan et al.

It appearing to the Court that the defendant JOHN SANDS, has had process duly issued against him, which process has been returned not to be found, it is by the Court, this 6th day of July, 1892, ordered that the said John Sands cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise this cause will be proceeded with as in case of default.

Provided a copy of this order shall be published in the Washington Law Reporter by successive weekly insertions for the space of three weeks preceding said day.

The object of this suit is to have assigned to the defendant, Ellen Heffernan, her dower in the property described in the bill, for an accounting and for a receiver.

A. C. BRADLEY, Justice.
 A true copy. Test: J. R. Young, Clerk, &c.
 By M. A. Clancy, Asst. Clerk.

[Filed July 6, 1892. J. R. Young, Clerk.]

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, letters testamentary on the personal estate of DAVID JACKSON late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of June, 1892.

JOSEPH J. WATERS,
 3141 M St., n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 30th day of June, 1892.

Rufi Van Brunt }
 vs. No. 13,878. Eq. Docket 33.
 Margaret E. Van Brunt.

On motion of the petitioner, by Mr. Chas A. Walter, his solicitor, it is ordered that the defendant, MARGARET E. VAN BRUNT, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for absolute divorce upon the grounds of willful desertion and abandonment for the uninterrupted period of more than two years.

Provided a copy of this order be published once a week for three weeks prior to said day in the Washington Law Reporter.

By the Court. A. C. BRADLEY, Justice, &c.
 True copy. Test: J. R. Young, Clerk, &c.
 By L. P. Williams, Asst. Clerk.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphan's Court business, letters testamentary on the personal estate of LUCY L. MILLETT, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of June, 1892.

CLARENCE W. MILLETT,
 607 F St., n. e.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of July, 1892.

James Ernest Garner }
 vs. No. 13,992. In Equity. Doc. 33.
 Samuel Hawkins et al.

On motion of the plaintiff, by Mr. B. F. Leighton, his solicitor, it is ordered that the defendants, SAMUEL HAWKINS, HOLLY HAWKINS and ALMINA HAWKINS, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain partition by sale of parts of lots O, P, I and R, in square 755, in the city of Washington, D. C., more particularly described in the bill of complaint herein.

By the Court. A. C. BRADLEY, Justice, &c.
 A true copy. Test: J. R. Young, Clerk.
 By M. A. Clancy, Asst. Clerk.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of RICHARD F. HARVEY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of June, 1892.

GEO. W. HARVEY,
 No. 1016 Pa. Ave., n. w.

27 Carusi & Miller, Proctors.

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[WEEKLY]

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WASHINGTON, D. C., - - - JULY 28, 1892

New Jersey Court of Errors and Appeals.

MEAD v. STATE.

FORGERY—INDICTMENT—WAIVER OF OBJECTIONS—INSTRUCTIONS.

1. If no objection has been made to an indictment before the trial jury is sworn, the indictment cannot be questioned upon a motion in arrest of judgment.
2. It is not necessary to show, upon the face of an indictment for forgery, how or in what manner a person is to be defrauded. That is a matter of evidence at the trial. All that is necessary in the indictment is to show an instrument which on its face is capable of being used to create a liability, and to aver that it was made with intent to defraud.
3. A single good count in an indictment will be sufficient to sustain a verdict of guilty, and judgment thereon.
4. The failure to describe a forged instrument as lost does not make the production of the instrument, if it be in fact lost, or without the control of the state, necessary to conviction. Upon proof of the loss or lack of control being shown, secondary evidence to establish the paper may be resorted to.
5. Omission of the trial judge to charge a pertinent legal principle is not error, unless he shall have been specially requested to charge it.

Decided November 17, 1891.

ERROR to Supreme Court. Indictment against William T. Mead for forgery. Verdict of guilty, and judgment thereon. Defendant brings error.

Mr. Justice MCGILL delivered the opinion of the Court:

The plaintiff in error was convicted in the Camden County Court of Quarter Sessions upon an indictment for forgery containing four counts, the first of which charged him with having forged the endorsement of D. H. Erdman on the back of a promissory note of the following tenor, to wit: "Camden, N. J., Feb. 5, 1890. One month after date I promise to pay to the order of D. H. Erdman, at Camden Safe Deposit and Trust Company, Camden, N. J., three hundred and fifty dollars. \$350.

W. T. Mead"—with intent to injure and defraud Daniel H. Erdman. The second count was similar to the first, except that it charged an intent to defraud generally, without alleging an intent to defraud a particular person. The third count charged him with uttering the same note with intent to injure and defraud Daniel H. Erdman; and the last count was similar to the third, except that it charged an intent to injure and defraud, without alleging an intent to defraud a particular person. Moving in arrest of judgment, the plaintiff in error sought to question the sufficiency of the indictment for that, among other things, it did not exhibit a forgery which could injure Daniel H. Erdman, or any other person. Upon the denial of this motion, error is assigned.

No objection was made to the indictment prior to the swearing of the jury. The fifty-third section of the Criminal Procedure Act (Rev. Stat., p. 277) requires that all objections to an indictment, for any defect of form or substance apparent on the face thereof, shall be taken by demurrer or motion to quash before the jury is sworn; and it has not been suggested how the bar of this statute can be surmounted. But as the motion assumes that no crime was charged, and great stress has been put upon that point by counsel, I will shortly examine the indictment. It alleges that upon the back of a promissory note made by the plaintiff in error, payable to the order of D. H. Erdman, the name of Daniel H. Erdman was forged, with intent to injure and defraud. The forgery put Erdman in the attitude of accommodation endorser, not under obligation while the paper remained in the hands of the maker, but liable to be put under obligation whenever the maker should duly pass the note to a third person. The instrument was complete; and, so far as it was concerned, nothing more was needed to accomplish the injury to Erdman or a third person. No forgery can do injury until it is uttered. Nevertheless it is a crime, because it makes an instrument intended for use to the injury of another. Because it may be so used, and it is intended to be so used, it is justly regarded as tending to injure. In the case of State v. Robinson, 16 N. J. L., 507, a bank note for \$5, issued by the Lafayette Bank, of Boston, which was insolvent, was altered by pasting the words "New York" over the word "Boston"—there being a solvent Lafayette Bank in New York—with intent to use it as a genuine note of the New York bank. Such a note, in the hands of the forger, created no liability on the part of the New York bank, yet it was held to be a

criminal forgery, because the alteration made the note purport on its face to be made by the latter bank, and thereby tended to charge that bank with its payment. It is not necessary to show upon the face of the indictment how, or in what manner, the party is to be defrauded. That is a matter of evidence at the trial. All that is necessary in the indictment is to show an instrument which on its face is capable of being used to create a liability, and to aver that it was made with intent to defraud. *West v. State*, 22 N. J. L., 212, 235. The remaining objections to the indictment, go the sufficiency of the counts for uttering the forgery. It will not profit to examine them; for, aside from the bar of the statute to the consideration of such objections after the jury is sworn, it is well established that the counts for forgery alone will sustain the conviction. *West v. State*, Id., 236; *Cook v. State*, 24 Id., 845; *Johnson v. State*, 26 Id., 321; on error, 29 Id., 453; *Hunter v. State*, 40 Id., 532.

Another error assigned is that at the trial the State was permitted to produce secondary evidence of the note, and the forged endorsement upon it, without having first shown its inability to produce the originals. It appears that the note, with the forged endorsement, was passed to the Camden Safe Deposit and Trust Company, and there credited to the account of the plaintiff in error. After the forgery was discovered, one John B. Wood, a resident of Pennsylvania, paid the plaintiff's indebtedness to the trust company, taking all the notes and securities it represented, among which was the notes set out in the indictment. The note had been protested; and through the notary who protested it the grand inquest was able to obtain sufficient data to correctly copy the forged instrument in its indictment.

When the trial of the indictment was moved, the prosecuting attorney had not been able to procure the note. The State proved that it had issued both subpoena and attachment for John B. Wood, and that it had sent a constable to his place of business in Philadelphia to find him, and also had caused an attorney to telegraph to him, not only at his place of business, but also at his residence. Upon this proof being made the trial court permitted the State to introduce secondary evidence of the contents of the missing paper. After the evidence was had and the case had been closed on both sides, Wood appeared in court, and, by consent of the court and both parties, was permitted to testify. He swore that he did not know what had become of the note in question, but believed that he may

have given it, with other papers, to the son of the defendant. The insufficient and suspicious explanation by this witness of his reasons for taking up notes, coupled with his almost incredible forgetfulness of his disposition of them and his evident friendly connection with the plaintiff in error, most convincingly points to a control of the missing paper in protection of the plaintiff in error, and proves the inability of the State to have produced it at the trial.

The failure of the indictment to describe the note as a lost instrument did not make the production of the note an absolute necessity to a legal conviction. The effect of the positive allegation of the certain tenor or words of the paper was to require strict and literal proof of the paper, as it was alleged, which would not have been necessary if uncertainty in allegation had been affirmed and excused. That which was effected was the degree and quantity of evidence requisite to sustain the allegation, not the kind of evidence. Whatever the allegation, it must be sustained by evidence produced under the settled rules which control in both civil and criminal cases. Prominent among those rules is that which requires that the best evidence practicable shall be produced. The writing, if in existence, and in the power of the State, must be had. If it be lost, destroyed, or in the possession or control of the defendant, a copy of it, or parol evidence of its contents, may be resorted to. *State v. Potts*, 9 N. J. L., 30. Very much in point here, and illustrative of the principle I have stated is the case of *Commonwealth v. Snell*, 3 Mass., 82, where the brother of the defendant called upon the holder of the forged note, and gave him security therefor, and through that means contrived the secretion of the paper so that the solicitor general was not able to procure it at the trial. Secondary evidence was admitted to prove it. In this case Chief Justice Parsons remarked: "But if the instrument cannot be produced the prosecutor being in no fault, and more especially if it be secreted to protect the offender, the next best evidence will be admissible; and if it satisfies the jury of the defendant's guilt, it is a legal foundation for a verdict against him." It is deemed that, under the proofs, the court did not commit error by permitting the note to be proved otherwise than by its production.

It is next insisted that the trial judge committed error in his charge, in that he generally defined the crime of forgery, but failed to clearly explain to the jury how the forged

endorsement could prejudice Erdman, or any other person, and in that he failed to instruct the jury that the defendant was entitled to the benefit of reasonable doubt. It does not appear that the judge was requested to make the explanation or to give the instruction indicated. If he had been requested to do so, his neglect or refusal to comply would have been error. It is the duty of the court, when required, to declare the law upon any point fairly involved in the consideration of the cause; and its refusal to do so is error. But when no instructions are requested, the charge to the jury, and the selection of the points to which the charge shall be directed, rest in the sound discretion of the court; and the omission to state a pertinent legal principle is not error. It is competent for either party to require an expression of opinion of the court upon any point fairly involved in the case, in the shape of a request to charge; and, unless such request is made, error will not lie because the judge may have omitted to charge upon such point. Cole v. Taylor, 22 N. J. L., 59; Westcott v. Garrison, 6 Id., 132; Folly v. Vantuyl, 9 Id., 158; Hetfield v. Dow, 27 Id., 440.

We find no error in the record that was injurious to the plaintiff in error.

Let the judgment below be affirmed.

Court of Appeals of Maryland.

STATE, USE OF GEORGE WHITELOCK AND
DANIEL B. DORSEY, TRUSTEES OF
MARGARET DORSEY ET AL.,
v.

ANDREW BANKS, HENRY A. PARR ET AL.

Where a demurrer to a bad plea is erroneously overruled and the equitable plaintiff pleads over and recovers a judgment, and nothing in the record shows that he has been injured or prejudiced by the erroneous ruling there will be no reversal.

Decided June 8, 1892.

Justices MILLER, ROBINSON, BRYAN, IRVING, FOWLER,
BRISCOE and McSHEREY sitting.

APPEAL from the Superior Court of Baltimore City.

Mr. Justice McSHEREY delivered the opinion of the Court:

After Andrew Banks had relinquished his trust under the will of his father, as stated in the preceding case, George Whitelock and Daniel B. Dorsey were appointed trustees in his stead. They thereafter brought suit against the former trustees and the sureties on his bond to recover the sum of \$450, alleged to be the balance of the principal of the trust estate due

to the new trustees. The declaration averred that by an auditor's account, which had been duly ratified, the said sum of \$450 was due and payable by Andrew Banks; that demand had been made therefor; and the breach assigned was the non-payment of this sum of money. The defendants pleaded "that there is not due and payable by said Andrew Banks, trustee, to the principal of the trust estate mentioned in the declaration, the said alleged sum of \$450, or any part thereof, and that the said sum of \$450 mentioned in Auditor's Account T, referred to in the declaration, does not form any part of the principal of said trust estate." To this plea a demurrer was interposed. The Superior Court overruled the demurrer, and the plaintiff then traversed the plea and issue was joined. The case was submitted to the court, and a verdict and judgment were rendered for the equitable plaintiffs for \$208. From that judgment the equitable plaintiffs have appealed. There is no bill of exception in the record. The only question raised is on the demurrer.

The plea was bad—Poe's Pl., 525. It was no answer to the declaration. The demurrer ought to have been sustained; but the equitable plaintiffs having pleaded over and having recovered a verdict and judgment, there is nothing in the record to show that they have been injured or prejudiced by the erroneous ruling on the demurrer. No evidence is set forth to indicate that the amount actually recovered was not the full and entire amount which the plaintiffs were entitled to recover. There must not only be error, but also injury to justify a reversal—and the error and injury must both be apparent on the face of the record. Had the verdict been against the equitable plaintiffs a reversal would necessarily have followed, or had the plaintiffs seen fit to stand on the demurrer and to take judgment thereon, a like result would have ensued on appeal. In each instance injury would have been apparent. But as they have recovered a judgment it by no means follows that they were damaged at all by the erroneous ruling on the demurrer, and there is, consequently, nothing left for us to do but to affirm the judgment.

Judgment affirmed with costs.

ADMIRALTY — Charter party. — Unqualified charter parties are to be construed liberally as mercantile contracts, and a party who has by charter charged himself with an obligation must make it good, unless prevented by the act of God, the law, or the other party to the charter. —The B. F. Bruce, U. S. C. (Ohio), 50 Fed. Rep., 118.

Court of Appeals of New York.
SECOND DIVISION.

JERRY PETRIE, RESPONDENT.

v.

PHENIX INSURANCE COMPANY OF
BROOKLYN, APPELLANT.

1. Insurance was under an open canal policy, with which was a book in which was entered by the insured the risk offered, and afterwards endorsed or disapproved by the agent. The risk, which was from Brooklyn to Tarrytown, was entered as "from New York Harbor to," the destination column being blank. In the approval column the agent wrote the word "harbor" on receiving the book.
2. Held. That the failure to state time of voyage or the place of destination did not avoid the policy. The question as to what constituted New York Harbor was for the jury.
3. Held. That where the boat grounded, because left by the tide, and broke in two, and there was evidence of seaworthiness at the time of lading, unseaworthiness will not be presumed.

Decided March 8, 1892.

April 28, 1886, the defendant issued to Sherman Petrie an open uniform canal cargo policy by which it undertook to—

"Insure the several persons whose names are hereafter endorsed hereon as owner, advancee, or common carrier, on goods * * * on his own boat, or boats belonging to others, loaded on commission or charter. From place to place, as endorsed hereon, or in a book kept for that purpose, at the rate, and on the goods * * * as specified in the said endorsement. No risk considered as insured under this policy until said endorsement is approved and signed by this company or its duly authorized agents at New York, unless with special agreement with the company, and endorsed hereon.

"Beginning with the adventure upon the goods * * * from and immediately following the lading thereof, at the port or place endorsed as aforesaid, and continuing the same until the said goods * * * shall be safely landed at the port of destination as aforesaid.

"Touching the adventures and perils which the said insurance company is contented to bear and take upon itself on said trip or voyage they are of the seas, canals, rivers and fires, and all other perils, losses, or misfortunes that shall come or happen to the hurt, detriment, or damage of the said goods * * * laden on board of the said boats on the voyage or trip aforesaid."

Excepting certain perils and losses which do not include the misfortune which happened to the boat in question.

It was provided in the policy that in case of

loss, "and within thirty days from the time the same may happen, the said insured shall deliver to said company as particular an account thereof as the nature of the case will admit."

Also :—

"That no suit or action against this company for the recovery or any claim upon, under, or by virtue of this policy shall be sustainable in any court of law or chancery unless such suit or action shall be commenced within the time of twelve months next after such loss or damage shall occur."

With this policy a book was delivered to the insured ruled in columns, and having the following printed headings: "Date; Account of; Vessel or boat; From; To; Cargo; Amount; Premium; Signature of Approval."

Sherman Petrie was a forwarder engaged in business at 142 Broad street, New York. W. M. Onderdonk & Co. were insurance brokers, agents of defendant, and engaged in business at Nos. 1 and 3 Beaver street, New York. By the course of business between Petrie and W. M. Onderdonk & Co. the cargoes laden on boats were entered by Petrie or his clerk in this book, which was sent daily to W. M. Onderdonk & Co., and they approved or disapproved of the risk so offered. Their approval was indicated by entering in the column headed "Signature of Approval" the number of the page of their own book in which the risk was entered. This was the usual form of approval, but when risks were taken for "The Harbor of New York" the approval of the agents was denoted by the word "Harbor" written in the column headed "Signature of Approval."

The premiums were fixed by the insurance agents and charged to Petrie, who paid them monthly. October 17, 1887, Petrie loaded the canal boat "C. L. Abel" with one thousand barrels of Portland cement, and on that day entered in the columns of his insurance book: "Date, Oct. 17, 1887; Account of, Sherman Petrie; Vessel or boat, C. L. Abel; From, New York Harbor; To, blank," except as the word "Harbor" extended into that column; "Cargo, Cement; Amount \$2,500; Premium, no entry; Signature of Approval, no entry;" and sent the book to W. M. Onderdonk & Co. on the same or the next day, and thereupon they wrote the word "harbor" in the column headed "Signature of Approval," and returned the book to Petrie. The boat left Brooklyn October 19, 1887, and reached Tarrytown, its destination, the next morning, where later in the day it sank at its dock. The sinking was caused by the tide going out and grounding the boat at

about its centre, which caused it to break in two, so that it filled with water and destroyed the cargo. This action was brought December 1, 1888, to recover this loss. The defenses interposed were: (1) That the defendant did not insure the risk; (2) that a valid contract to insure was not entered into because the duration of the risk was neither measured by time nor termini of the voyage; (3) that the loss was not occasioned by the perils insured against; (4) that proofs of loss were not furnished within thirty days; (5) that the action was not begun within twelve months after the happening of the loss.

Chief Justice FOLLETT delivered the opinion of the Court:

The question which meets us at the threshold of this discussion is, was the evidence sufficient to justify the submission of the question, whether the defendant's agents approved of the application for this insurance? The authority of W. M. Onderdonk & Co. to bind the defendant by endorsing in the book in any form their approval of the risk proposed, is not denied. Six days before the entry in question the insured entered on the same book an application for insurance on the boat "Delia McKeever" for \$2,500 on cement, New York Harbor, which was approved by writing the word "harbor" in the column designated "Signature of Approval." The insured testified that other risks were approved by the entry of the word "harbor" in the approval column. A clerk of the insurance brokers, who was sworn in behalf of the defendant, testified that he wrote the word "harbor" opposite this application and the same word in the same book against other applications for insurance, and that it indicated an acceptance of the risk by insurers other than the defendant. The witness also testified that he never informed the insured that the word "harbor" indicated that the risk was not taken by defendant, but by some other company, and the insured had no other open policy and book, except these issued by defendant. The assured testified that these brokers did all of his insurance, that he always applied for it in the same way by entering the proposed risk in this book and sending it to the agents for their approval, who usually returned certificates of insurance executed by the defendant, and that he never had received any from any other company. This state of the evidence justified the court in submitting the question of the acceptance of the risk by the defendant to the jury and its verdict must be regarded as final upon this question.

Was the contract of insurance void because the duration of the risk was not fixed by time nor for a voyage between specified places? Ordinarily marine contracts of insurance not specifying the duration of the risk either by time or by the places at which the voyage insured is to begin and end are void for uncertainty; Molloy, Bk. 2, Ch. 7, Sec. 14; 2 Par. Mar. L., 311; 1 Phil. Ins., Sec. 918; 1 Arn. Mar. Ins., 6th ed., 236; Manly v. United M. & F. Ins. Co., 9 Mass., 85.

The undisputed evidence is that during the season of 1887 the assured had been engaged in forwarding cargoes of Portland cement to the contractors engaged in extending the Croton water supply, which were delivered at various points in the upper part of the harbor of New York, on the Harlem River, and at Tarrytown. It was the custom of the contractors to direct the assured to load five or six thousand barrels on boats and subsequently designate the places at which they should be unloaded. That in such cases the place of destination could not be entered in the book, and that the words "from New York to harbor" indicates such shipments. The assured also testified that all of these cargoes had been insured through these agents by the defendant under the policy put in evidence and by entries on the book made as in this instance. Under such a practice an insurance on a cargo to be delivered at some place in the same port would not be so indefinite and uncertain as to render the contract void, both parties understanding what was meant by the term. Did the loss occur in that harbor? It was competent to receive evidence as to the meaning in the business of insurance of the term "Harbor of New York." Nelson v. Mutual Life Ins. Co., 71 N. Y., 453. Upon this issue there was evidence that the term "Harbor of New York" as used in the business of marine insurance, included Tarrytown and other points within the New York custom house district. Other witnesses testified that the harbor of New York did not extend above Spuyten Duyvil, and did not include Tarrytown. This question was submitted to the jury and found for the plaintiff. No available error is presented by the ruling on the question put to the witness Baker, because he was subsequently permitted to testify as to the meaning of the words "New York to harbor" and fully as to all facts called for by the question.

It is insisted that the loss was not within the perils insured against. The evidence is that the "Abel" was loaded at the Anglo-American Stores, Brooklyn, N. Y., October 19, 1887, and

left that place at 8 o'clock p. m. of that day in a tow bound for Tarrytown, where it arrived at 1 o'clock the next morning. The boat was moored alongside of the dock, and when the tide went out it grounded and was so broken or strained that it sank, and the cargo was destroyed. It was testified that the boat was seaworthy when laden, which evidence was disputed. This case does not fall within the class of cases of which *Berwin v. Greenwich Ins. Co.*, 114 N. Y., 231, is a type. In that case the boat sprung a leak and sank without any known cause. It was held that this raised a presumption that it was unseaworthy, but that this presumption might have been rebutted by showing that the loss was occasioned by some other cause than the unseaworthiness of the boat. This was precisely what was done in this case.

Whether the defendant had waived the requirement in the policy, that formal proofs of loss should be furnished within thirty days, and an action brought within twelve months after a loss, was submitted to the jury and was found for the plaintiff. No point is made by the learned counsel for the appellant that the evidence was insufficient to sustain the verdict on these issues.

But two exceptions were taken to the instructions given by the court, and neither of them was argued by the learned counsel for the appellant.

I think the judgment should be affirmed, with costs. All concur.

CORPORATIONS — Stock.—A subscription for stock in a corporation, though payable in property at a fictitious valuation, and not enforceable against the subscriber of the corporation in its own interest, because in violation of Const. Art. 14, Sec. 6, and Code, Sec. 1662, prohibiting the issue of stock except for money or property at a reasonable value, is not void as against a creditor of the corporation, and cannot be set up as a defense by the subscriber in garnishment proceedings by such creditor.—*Joseph v. Davis, Ala.*, 10 South. Rep., 830.

CARRIERS — Passengers — Instructions.—The court properly charged that "the railroad company was required to use the utmost practicable care in providing for the safety of passengers on its road, and to use that high degree of prudence, diligence and care in building its road, and in maintaining its track and in running its trains as would be used by very cautious, prudent, and competent persons under similar circumstances, and, if it failed to use such degree of care, such failure was negligence."—*Levy v. Campbell, Tex.*, 19 S. W. Rep., 438.

Circuit Court, Southern District Ohio, E. D.

RIPLEY v. ELSON GLASS CO.

1. DESIGN PATENTS—Anticipation—Glass Bottles and Jars.—Design patent No. 17,243, issued April 5, 1887, to Daniel C. Ripley, for footed bottles and jars, consisting of a spherical body, a figured ring-neck, covering a zone of the body, and having a raised pattern on its entire surface, was not anticipated by certain designs having a general resemblance thereto in shape, but lacking the raised ornamentation of the neck.
2. SAME—Evidence—Method of Producing.—Although the suit does not involve the method of producing the result, yet, in considering the question of anticipation, the court may properly take into consideration the fact that the patentee invented the method of making articles of glassware having a "blown" body and a "pressed" neck, thereby rendering possible the raised ornamentation of the neck in the patent.
3. SAME—Construction — Interpretation of Words.—The words of the claim and specifications which refer to the body of the vessel as "globe-shaped" or "spherical" must be taken in their ordinary, rather than their mathematical, signification, and infringement cannot be avoided by merely elongating the body so as to render it an ovoid, rather than a sphere or globe.
4. SAME—Test of Infringement—General Resemblance.—In determining whether a design patent is infringed, the test is whether there is a substantial similarity in appearance; not to the eye of the expert, but to that of the ordinary observer, giving such attention as would ordinarily be given by a purchaser of the article bearing the design.
5. SAME—Penalty.—Where the infringement of a design patent is deliberate and intentional, the court will impose upon the defendant the penalty of \$250 provided for by Act Feb. 4, 1887.

In Equity. Decided March 12, 1892.

Suit by Daniel C. Ripley against the Elson Glass Company for infringement of a patent. Decree for complainant.

Circuit Judge JACKSON delivered the opinion of the Court:

This suit is brought for the alleged infringement of design patent No. 17,243, issued April 5, 1887, to Daniel C. Ripley, the complainant, "for a new and original design for glass bottles and jars," After referring to Figs. 1 and 2 of the accompanying drawings, the specifications state that—

"The characteristic feature of my design consists of the globe shaped body, *b*, and figured ring or neck portion, *a*, surmounted on a zone of the spherical body *b*. The figured portion consists of a raised pattern, covering the whole surface of the ring, *a*; but the heads, *d*, may be omitted, as shown in Figure 2. The body, *b*, has foot, *c*. A suitable stopper, *e*, is used with some articles, and with others it is not. It therefore is not to be considered necessary to my design, which is applicable to bottles, jars, pitchers, and similar footed articles."

The first claim based thereon is as follows:

"The design for footed bottles and jars, consisting of the spherical body, *b*; the figured ring-neck, *a*, covering a zone of the body, *d*; the ring having a raised pattern on its entire surface, as shown and described."

Infringement is charged only as to this first claim of the patent. The defenses set up by respondent in its answer are: (1) invalidity of the patent, because anticipated by certain prior designs; and, (2) non-infringement.

After a careful examination and consideration of the evidence introduced on both sides, which it is not deemed necessary to review or set out in detail, the conclusions reached by the court upon the whole case are the following, viz:

1. That the defense of invalidity and lack of invention in the patent sued on is not sustained. The sugar-caster shown on plate 9 in defendant's exhibit "Albert Jacquemart's Publication," and the glass pitcher, shown on page 291 of defendant's exhibit "Hamm's Catalogue," chiefly relied on to establish this defense, while resembling to some extent the jar embodying complainant's design, cannot properly be said to anticipate the latter's patent. Defendant's expert witnesses find some general resemblance between said articles and the patent, aside from or without considering the ornamentation of the latter. But it would be giving to complainant's design too narrow a construction to limit and confine it to the exact conformation of jar shown in the drawings accompanying the specifications of the patent, and to ignore the ornamentation of the pressed neck, surmounting the zone of the globe or spherical shaped plain body. The design does not consist in the precise shape of the body of the jar, nor in the body with the neck attached, independent of the ornamentation upon the latter; but it is found in the artistic association of all three features, which present agreeable contrasts, and render the article of manufacture attractive to the eye. Thus considered, it would violate all sound principle to disregard the pressed neck ornamentation, intended to promote, and, by its contrast with the plain body of the article, actually promoting aesthetic effect, so as thereby to open the way to destroy the design by showing that other features were previously in use. It is well settled that the patent is *prima facie* evidence of novelty and validity, which presumption is only to be overcome by clear, positive, and unequivocal proof. *Miller v. Smith*, 5 Fed. Rep., 359; *Thayer v. Hart*, 20 Fed. Rep., 693; *Lehnbeuter v. Holtzhaus*, 105 U. S., 96. Applying this rule to defendant's exhibits in connection with the

other testimony in the case, the court is clearly of the opinion that complainant's patent was not anticipated thereby. On the contrary, the *prima facie* evidence of the novelty of the patent, instead of being overcome, is supported and established beyond any reasonable doubt by the evidence introduced on behalf of complainant. It is distinctly shown that complainant was the first to produce a footed globula, or spherical bodied glass jar, having a neck covered with a raised pattern. Prior to the date of his design, no practicable method of making articles of glassware having a "blown" body and "pressed" neck was known. Complainant is shown to have invented the method by which the body of the glass jar or other article of glass could be blown so as to be of a rounded, globular, or spherical shape, and the neck be pressed, thereby exhibiting the ornamentation of raised figures upon the latter, while the two parts—neck and body—united in one integral article. While this suit does not involve the method of producing or accomplishing this result, it is very properly urged by counsel for complainant that the design should be considered as having originated with the invention of the method for giving it embodiment. But, without going further into details, the entire proof in the case fails to establish the defense of invalidity in the patent sued on.

2. That, the patent being valid, the first claim thereof is clearly infringed by the defendant. This, as a question of fact, is fully established, not only by the testimony in the case, but also by the comparison of the exhibits made by the court. It is shown both by inspection and by the proof that defendant's article of manufacture is substantially the same as that of the complainant. Minor differences are pointed out by the ingenuity of experts, but, notwithstanding such differences, there still remains that substantial identity of appearance in the two designs, which, under well-settled rules for testing the question, render defendant an infringer. It is not and cannot be questioned that the first jar manufactured by defendant —like the small jar exhibited—was almost an exact imitation of complainant's design. When defendant ceased, upon notice, to manufacture that article, it sought to accomplish the same result, and avoid the admitted infringement, by merely elongating the body of its jar, so as to make it more of oval than globular or spherical in shape. But it is too plain for discussion that complainant's design is not to be limited or restricted to an exact globe or sphere in the body of the jar, but must be extended to any

body that is globular or spherical—pertaining to a globe or sphere. The defendant's large jar is unquestionably spherical in shape, and it is a mere play upon words—making a distinction without any real difference—to call it an oval or ovoid, and thereby escape the charge of infringement. When complainant's specifications and claim refer to the body of the jar being "globe-shaped" or "spherical," these terms are to be understood, according to their natural and ordinary meaning and signification, as indicating and covering a body not mathematically exact in dimension, but comparatively so. The terms are relative, and, as thus employed, embrace any shaped body that is globular or spherical in character, such as an egg or acorn. To test the two designs by the technical mathematical distinction between an oval or ovoid and a globe or sphere, would be not only to place an improper construction upon the language of the patent, but would involve a total disregard of the well-settled principles laid down by the authorities for determining the question of infringement in such cases. Since the case of Root v. Ball, 4 McLean, 177, decided in 1846, the rule applied in such cases is that "it is not necessary, in order to constitute infringement, that the thing patented should be adopted in every particular; but, if the design and figures were substantially adopted by the defendant, they have infringed the plaintiff's right. It is an infringement to adopt the design so as to produce substantially the same appearance." And upon the question of substantial identity or similarity in design patents the test to be employed or applied is not the eye of the expert, but that of the ordinary observer, giving such attention as would ordinarily be given by a purchaser of the article bearing the design. In Gorham v. White, 14 Wall., 528, the rule is stated thus:

"We hold, therefore, that if, in the eye of an ordinary observer, giving such attention as a purchaser usually gives, two designs are substantially the same; if the resemblance is such as to deceive such an observer, inducing him to purchase one supposing it to be the other—the first one patented is infringed by the other."

The test of infringement in design patents is more analogous to that applied in "trade-mark" cases than to that adopted in respect to patents on mechanism. Testimony of experts is admissible in determining whether two mechanisms are substantially identical; while in design patents, resting almost wholly upon "appearances," the test of sameness is determined by the eye of the ordinary observer, giving such

attention as a purchaser usually gives, which is substantially the same principle applied in trade-mark cases. Applying this rule to the present case, the court has, without hesitation or doubt, reached the conclusion that defendant's large jar as now made is an infringement of complainant's patent. The decisions which, in the opinion of the court, fully sustain this conclusion, both on the testimony and inspection of the articles and designs, are the following: Root v. Ball, 4 McLean, 177; Perry v. Starrett, 3 Ban. & A., 485; Gorham Co. v. White, 14 Wall., 511; Miller v. Smith, 5 Fed. Rep., 359; Jennings v. Kibbe, 10 Fed. Rep., 669; Wood v. Dolby, 7 Fed. Rep., 475; Dryfoos v. Friedman, 18 Fed. Rep., 825; Tomkinson v. Manufacturing Co., 23 Fed. Rep., 895; New York Belting & Packing Co. v. New Jersey Car Spring Co., 48 Fed. Rep., 556.

3. That defendant's infringement of the first claim of the patent was so deliberate and intentional as to warrant the court, under the act of February 4, 1887, in imposing upon it the payment of the \$250, as prayed for in the bill.

It follows from the foregoing conclusion that complainant is entitled to the relief sought by his bill, and a decree in his favor is rendered accordingly. The defendant will be enjoined from further infringement, will be charged with the sum of \$250, will be taxed with the costs of the suit, and the usual reference, for an account to ascertain profits made by defendant or damages sustained by complainant, will be directed.

ACCIDENT INSURANCE.—A policy insuring against death, effected through external, violent or accidental means, but excepting all cases in which there should be no visible sign of bodily injury, or in which death should occur in consequence of disease, or in which the injury was not the proximate cause, does not relieve the insurer from liability, where death results from *peritonitis* occasioned by a fall; and this, even though the insured previously had *peritonitis*, and had thus been rendered peculiarly liable to a recurrence.—Freeman v. Mercantile Mut. Acc. Assn., Mass., 30 N. E. Rep., 1013.

APPEAL.—Objections not raised below—Res adjudicata.—(1) The objection that a former adjudication had not been pleaded, and was therefore not available as a defense, cannot be taken on appeal, where the adjudication was found by the trial court, and was not excepted to. (2) A judgment, in an action or proceeding against the executive board of a city to compel them to act with respect to awarding a contract in which it was decided that it was their duty to act, estops the city. June 7, 1892. Ashton v. City of Rochester. Opinion by O'BRIEN, J.

Unpunctuality on Railways.

A case which was characterized by the county court judge before whom it came as undoubtedly a case of great public interest—a circumstance which resulted in a certificate for costs on the higher scale—opens up some important questions as to the law respecting the liability of railway companies, a subject which is of great interest to a very large proportion of the population. The law on the subject has been made the subject of discussions several times in recent years, the case of *Le Blanche v. London and North Western Railway Co.*, to which we shall presently refer, decided in 1876, being the leading case.

The facts of the case on which we are now commenting were certainly, to some extent, peculiar, and there can be no doubt that if an appeal be brought against the decision, as, indeed, it was intimated that there would be, a strenuous attempt will be made to show that they differ materially from those which came before the courts on previous occasions. A gentleman of considerable fortune was the defendant in this case, and the journey was a first-class one from Paddington to Teignmouth. The Great Western Railway Company claimed £31 17s. against the defendant, Mr. Lowenfield, as the charge for a special train from Bristol to Teignmouth. The defendant, on the other hand, counter-claimed in an elaborate manner. He claimed damages for breach of the original contract to convey him by the express train in which he started, or, in the alternative, damages for breach of the contract to stop ten minutes at Swindon. He also made a claim in respect of sundry incidental expenses: the cost of the journey from Bristol to Teignmouth—which was seven shillings—and three shillings for telegrams. There was also a general claim for damages, for discomfort, annoyance, and inconvenience. The learned judge decided the claim in respect of the special train in favor of the railway company, and he then proceeded to dispose of the various portions of the counter-claim in a very elaborate judgment, which practically affords a review of the law on the interesting and important subject with which it deals.

Before we proceed to consider with greater particularity the case so recently decided, it will be desirable for us to go back to the earlier cases. The chief case on the subject to which we have already alluded, *Le Blanche v. London and North Western Railway Company*, is reported L. R., 1 C. P. D., 286. In that case the

plaintiff was a shipbroker who took a first-class ticket from Liverpool to Scarborough. The train was too late at Leeds to enable the plaintiff to catch the train by which he ought to have gone on to York, and this threw the subsequent details of the journey wrong and the question to be decided was whether £11 10s. could be recovered for the cost of a special train taken from the North Eastern Railway from York to Scarborough. An important circumstance in the case was that the plaintiff had no particular business or engagement at Scarborough which necessitated his being there at any particular time. The county court judge decided in the plaintiff's favor, holding that the principle laid down in *Hamlyn v. Great Northern Railway Company*, 20 L. J. Ex., 22, "that where one party to a contract does not perform it the other may do so for him as near as may be and charge him for the expenses incurred in so doing," applied to the case. This decision was upheld by the Court of Common Pleas, but reversed by the majority of the Court of Appeal. On this occasion Lord Justice Mellish laid down the law as follows:

"I think that any expenditure which, according to the ordinary habits of society, a person who is delayed in his journey would naturally incur at his own cost if he had no company to look to, he ought to be allowed to incur at the cost of the company, if he has been delayed through a breach of contract on the part of the company, but that it is unreasonable to allow a passenger to put the company to an expense to which he could not think of putting himself to if he had no company to look to. The question then, in my opinion, which the county court judge ought to have considered, is whether, according to the ordinary habits of society, a gentleman in the position of the plaintiff who was going to Scarborough for the purpose of amusement and who missed his train at York, would take a special train from York to Scarborough at his own cost in order that he might arrive at Scarborough an hour or an hour and a half sooner than he would do if he waited at York for the next ordinary train. This question seems to me to admit of but one answer, namely, that no one but a very exceptionally extravagant person would think of taking a special train under such circumstances."

A case which throws further light on the law with regard to railway companies and their passengers is that of *Woodgate v. Great Western Railway Co.*, reported in the 38d volume of the Weekly Reporter, page 428. The bare names of the authorities that were cited on this

occasion occupy nearly half a column of the report. In this case the plaintiff, who was a practicing barrister, claimed damages for personal inconvenience, "suffering annoyance and loss of time by being detained on a journey from Paddington to Bridgnorth which arrived more than three hours and a half late." Several important points were decided on the subject of conditions referred to on the ticket and expressed in the time books of the company, but it is beside our present purpose to consider them.

In this case Mr. Justice Hawkins made some observations which seem to have considerably influenced, if not controlled, the decision of his honor, Judge Stonor, with regard to the case before him. In the former part of his judgment Mr. Justice Hawkins had considered at great length the question of the liability of the railway company, and had come to the conclusion that no case had been made out against them. He then went on to say that there was another question incidentally raised which it was not absolutely necessary for the court to determine, because in their opinion the defendants were entitled to the verdict, viz., whether, if the plaintiff were entitled to recover, he would only recover nominal damages for inconvenience. On this point Mr. Justice Hawkins, in language which will probably be very carefully analyzed hereafter, the following passage is worthy of reproduction, not only on account of the principle discussed, but also the humorous character of the language employed :

"It is bad enough to be traveling slowly, but not to travel at all, and to be landed on a platform 'where there is no roof to cover you unless indeed you choose to cram yourself into one general waiting-room where you cannot move, I should have thought was inconvenient enough.' It was said this was no inconvenience to the plaintiff, and that he ought not to be compensated for it. What was he to do? We on the bench listen to the narration of his miseries with all the serenity and dignity which becomes us; but if we were to find ourselves upon a platform stripped of our judicial functions for the moment and compelled to wander up and down, looking at these jam tarts and soda-water bottles—refreshments, as they call them—I think in all probability we should forget some of the dignity which appertains to and is due to our office; at all events we cannot find fault with anybody who is a little irritated and excited and feels he has been put to inconvenience. I must say if the plaintiff were entitled to recover I do not think 20s. would be too

much, but he cannot get that 20s. because I think he is not entitled to recover at all."

In the case tried before his honor, Judge Stonor, the expenses of the railway fare from Bristol to Teignmouth were allowed, also cost of telegrams and 40s. for discomfort and annoyance. With regard to the principal claim, that for the special train, the judge made the following important observation : "I am strongly inclined to think that the means of an individual ought not to be regarded, or, at all events, not be primarily regarded in considering this question, and that the object of the journey ought to be the first, if not sole, regard. If the object of a journey be some important public or private business, and still more the performance of some public or private duty which would not admit of any delay, then I think that, according to the above rule, the expense of a special train could be incurred without any 'exceptional extravagance,' and therefore recovered against those who are responsible for the delay. I am not, however, prepared to say that joining your own family and friends three hours sooner under the circumstances of this case is a sufficient object to justify the expenditure in question, or to take it out of the category of 'exceptional extravagance,' and, on the whole, I think that the defendant in this case is not, under the circumstances, entitled to recover the cost of the special train taken by him." The case is one of first importance, and we shall probably again advert to the subject.—*Law Gazette.*

Court of Appeals of Maryland.

ROBERT Q. TAYLOR v. ERASTUS LEVY.

April Term. June 8, 1892.

Justices MILLER, ROBINSON, BRYAN, IRVING, BRISCOE and MCSHEERY sitting.

APPEAL from Superior Court of Baltimore City.

Opinion by the court:

The plaintiff rented the premises in question to the defendant for a term of one year. The lease was in writing. At the expiration of the year it was renewed verbally, the plaintiff says for a year, the rent payable monthly, the defendant says it was rented by the month. The house was occupied by the defendant as a pool-room, and this was with the knowledge of the plaintiff. The Legislature by the Act of 1890, approved March 26, made pool selling unlawful, and the defendant in the latter part of the month of March delivered up the keys of the premises to the plaintiff. The suit was brought

to recover the rent for the month of April. We are all of opinion that the defendant, even if he rented the property by the month, could not terminate his tenancy without giving thirty day's notice as required by Sec. 860, Art. 4, Pub. Local Laws. We are all of opinion that there is no evidence from which the jury could find that the plaintiff rented the premises to the defendant for the purpose of using it as a pool room. He did know that it had been and was used for that purpose. But there is no evidence to show that the defendant was obliged to use it for that purpose. He could have used it for any other lawful purpose. There was error, therefore, in granting defendant's prayer.

Judgment reversed; new trial awarded.

IN EQUITY.—New Suits.

July 7, 1892.

14050. Harriette E. Ellmaker (by next friend). To change name to Harriette C. Neale. Com. sol., A. B. Duvall.

14051. Ida Dodge v. F. M. Dodge. For divorce. Com. sol., Saml. C. Mills.

July 8.

14052. Isaac E. Hess v. W. S. Horton et al. To declare conveyance fraudulent. Com. sol., C. A. Brandenburg.

14053. Wilhelmina Bowman et al. v. J. W. Davis et al. For release and to declare trustee. Com. sol., T. A. Lambert.

July 9.

14054. Lewis N. Ingram v. Robert Foutroy et al. To perfect title to south 25 ft., lot 11, block 18, H. & Ev. Sub. Meridian Hill. Com. sols., Edwards & Barnard.

14055. The Atlantic Bldg. Co. v. Frank Miller et al. For injunction to abate nuisance. Com. sol., W. F. Mattingly.

14056. Joe W. Kain v. Ollie Kain. For divorce. Com. sol., S. A. Cox.

14057. Benj. F. Butler v. Nathalie Pollard. To enforce trust deed. Com. sol., O. D. Barret.

July 11.

14058. Elizabeth T. Smythe v. Charlton Heights Improvement Co. of Virginia. To rescind contract. Com. sol., Edward L. Gies.

July 12.

14059. Eleanora Grammer, alleged lunatic. Upon petition of Commissioners, D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazleton.

14060. Lulu V. Turner, alleged lunatic. Upon petition of Commissioners, D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazleton.

14061. Sophronia Rigney v. Wm. Rigney. For divorce. Com. sol., H. W. Wiswall.

14062. Lizzie T. Taylor v. W. J. Taylor. For divorce. Com. sol., C. Carrington.

July 13.

14063. Edward Dougherty, alleged lunatic. Upon petition of Josepha H. Houghton. De lunatico inquirendo. Com. sol., J. B. Larner.

14064. Burr Vickers, alleged lunatic. Upon petition of Josepha H. Houghton. De lunatico inquirendo. Com. sol., J. B. Larner.

14065. Peter Peiffer, alleged lunatic. Upon petition of Josepha H. Houghton. De lunatico inquirendo. Com. sol., J. B. Larner.

14066. Manuel Farrara, alleged lunatic. Upon petition of Josepha H. Houghton. De lunatico inquirendo. Com. sol., J. B. Larner.

14067. Jno. W. Lauterback, alleged lunatic. Upon petition of Josepha H. Houghton. De lunatico inquirendo. Com. sol., J. B. Larner.

14068. David W. Howe, alleged lunatic. Upon petition of Josepha H. Houghton. De lunatico inquirendo. Com. sol., J. B. Larner.

14069. Annie E. Ward v. Frank K. Ward. For divorce. Com. sol., S. T. Thomas.

14070. Geo. W. Bowman v. Catherine E. Bowman. For divorce. Com. sol., Arthur W. Ferguson.

July 14.

14071. Chas. H. Raub et al. v. Wm. Mayse et al. To enforce lien. Com. sol., C. A. Brandenburg.

14072. Marcus S. Neville v. C. B. Shafer et al. For injunction and account. Com. sols., J. C. DePutron and Chas. Bendheim.

July 15.

14073. Thos. B. Jackson et al. v. H. S. Gist. To appoint trustee to will. Com. sol., D. O'C. Callaghan.

14074. Sarah A. Serrin et al. v. Geo. T. Cumberland et al. To sell pt. of lot 6, sq. 264. Com. sols., Edwards & Barnard.

14075. Elizabeth Cullinan v. E. T. Matthews et al. For injunction and to quiet title to part 3, sq. 488. Com. sols., Edwards & Barnard.

July 18.

14076. A. Meinberg et al. v. L. Meinberg et al. Judgment creditor's bill. Com. sol., H. P. Okie.

July 19.

14077. James, alias John, alias Judas P. Burnett, alleged lunatic. Upon petition Commissioners, D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazleton.

14078. Annie McGarvey, alleged lunatic. Upon petition Commissioners, D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazleton.

14079. Charles Wallace, alleged lunatic. Upon petition Commissioners, D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazleton.

14080. Franklin M. Phillips, (by next friend, W. K. Mendenhall). To change name. Com. sol., J. M. Yznaga.

14081. Louis Heilbrun, alleged *non compos mentis*. Upon petition of Sarah E. Heilbrun. De lunatico inquirendo. Com. sol., H. E. Davis.

14082. W. Mosby Williams et al. v. Joannah C. Block and John Linder. To remove cloud on title. Com. sol., John Ridout.

ADVERSE POSSESSION.—A person who has actual possession of a part of a tract of land described in his deed has constructive possession of the whole. *Porter v. Miller*, Tex., 19 S. W. Rep., 467.

IN EVIDENCE—Judge: "Prisoner, have you any visible means of support?" **Prisoner:** "Yes, sir, your honor. (To his wife) Bridget, stand up so that the court can see ye."

Legal Notices.

Rule of Court.

RULE 20. * * * * Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

FIRST INSERTION.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of CATHARINE GRAHAM, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 26th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of July, 1892.

BARTHOLOMEW DIGGINS,
30 Gordon & Gordon, Proctors. 384 Del. ave., s. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

The 27th day of July, 1892.

David M. Ogden, Exr., et al. } In Equity. No. 14,028. Doc. 34.
vs. Harrietta Parke et al.

On motion of the plaintiffs, by Messrs. Ralston and Siddons, their attorneys, it is ordered that the defendants, Harrietta Parke, Robert Parke, Henry Parke, Alice Parke, Lucy Parke, Thomas R. Parke, Mollie Parke, Mary Ann Heins, Ellen McForrest, James E. McConnell, Laura McConnell, Dora F. McConnell, Eloisa G. Parke, Alexander G. B. Parke, Mary L. Parke, John G. Parke, Helen G. Parke, Thomas H. Parke, Mary L. Parke, Agnes Parke, R. Baxter Parke, Jane R. Parke, Ann H. Biddle, James Halsey, E. Yarnell Halsey, Matilda M. Halsey, Edward Halsey, Millicent Halsey, Rebecca G. Rhodes, J. E. Rhodes, Elizabeth Garrett, Frances Garrett, Martha Garrett, Hetty Garrett, P. C. Garrett, Elizabeth C. Garrett, John B. Garrett, Hannah H. Garrett, Samuel Biddle, Kate Biddle, John W. Biddle, Marquis J. B. Cope, Mary L. S. Cope, Hetty Biddle Clay, Edward Clay, Mary Biddle Neill, John Neill, Elizabeth Biddle Ritter, Neilson Ritter, Peter Thomson, Owen Biddle, Robert Biddle, Rachel M. Biddle, Frances G. Griscom, G. A. Griscom, Clement M. Biddle, M. Cooper Biddle, Mary B. Wood, Howard Wood, Hanna Williams, C. W. Williams, Helen B. Thomas, George B. Thomas, Sarah F. S. Wilkinson, C. B. Wilkinson, Benjamin P. Smith, Loretta F. Smith, R. H. Van Deusen, P. Fatty S. Jackson, P. J. Smith, Frank W. Smith, Edward Fishmonth, Maria C. Smith, Maria C. Smith, Jr., Ella G. Smith, Lillian S. Hilliar, R. N. Williams, C. W. Williams, Elizabeth J. Williams, Sallie Williams, Phoebe Williams, J. R. Williams, M. R. Deland Williams, Sallie P. Williams Dillard, H. K. Dillard, Charles Williams, Hannah B. Williams, William P. Smith, Henry D. Biddle, Hetty D. Biddle, Mary D. Biddle, Thomas Williams and Elizabeth P. Williams, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a decree establishing of record the title of the plaintiffs to the north 20 feet front of original lot 30, square 127, situate and being in the city of Washington, District of Columbia, as complete and perfect and perpetually enjoining the defendants from asserting title thereto.

This order shall be published in the Washington Law Reporter and the Washington Post for the period required by the rule, and in the New York Herald once.

A. B. HAGNER, Associate Justice of the Supreme Court of the District of Columbia.

A true copy. Test: J. R. Young, Clerk.
By M. A. Clancy, Asst. Clerk.

50

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, Holding a Special Term for Orphans' Court Business.

July 22d, 1892.

In the case of William B. Todd, administrator of the estate of BENJAMIN U. KEYSER, deceased, the administrator aforesaid has, with the approval of the court, appointed Friday, the 19th day of August, A. D. 1892, at 11 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
30 No. 4401. Ad. D. 16. John J. Johnson, Proctor.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, letters testamentary on the personal estate of JOSHUA PERCE KLINGLE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 22d day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of July, 1892.
GEORGIANA N. KLINGLE,
30 Gordon & Gordon, Proctors. 1511 S St.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

The 26th day of July, A. D. 1892.

David M. Ogden } vs. Harrietta Parke et al. } In Equity. No. 14,001. Doc. 34.

On motion of the plaintiff, by Messrs. Ralston and Siddons, his attorneys, it is ordered that the defendants, Harrietta Parke, Robert Parke, Henry Parke, Alice Parke, Lucy Parke, Thomas R. Parke, Mollie Parke, Mary Ann Heins, Ellen McC. Forrest, James E. McConnell, Laura McConnell, Dora F. McConnell, Eloisa G. Parke, Alexander G. B. Parke, Mary L. Parke, John G. Parke, Helen G. Parke, Thomas H. Parke, Mary L. Parke, Agnes Parke, R. Baxter Parke, Jane R. Parke, Ann H. Biddle, James Halsey, E. Yarnell Halsey, Matilda M. Halsey, Edward Halsey, Millicent Halsey, Rebecca G. Rhodes, J. E. Rhodes, Elizabeth Garrett, Frances Garrett, Martha Garrett, Hetty Garrett, P. C. Garrett, Elizabeth C. Garrett, John B. Garrett, Hannah H. Garrett, Samuel Biddle, Kate Biddle, John W. Biddle, Marquis J. B. Cope, Mary L. S. Cope, Hetty Biddle Clay, Edward Clay, Mary Biddle Neill, John Neill, Elizabeth Biddle Ritter, Neilson Ritter, Peter Thomson, Owen Biddle, Robert Biddle, Rachel M. Biddle, Frances G. Griscom, G. A. Griscom, Clement M. Biddle, M. Cooper Biddle, Mary B. Wood, Howard Wood, Hannah Williams, C. W. Williams, Helen B. Thomas, George B. Thomas, Sarah F. S. Wilkinson, C. B. Wilkinson, Benjamin P. Smith, Loretta F. Smith, R. H. Van Deusen, P. Fatty S. Jackson, P. J. Smith, Frank W. Smith, Edward Fishmonth, Maria C. Smith, Maria C. Smith, Jr., Ella G. Smith, Lillian S. Hilliar, R. N. Williams, C. W. Williams, Elizabeth J. Williams, Sallie Williams, Phoebe Williams, J. R. Williams, M. R. Deland Williams, Sallie P. Williams Dillard, H. K. Dillard, Charles Williams, Hannah B. Williams, William P. Smith, Henry D. Biddle, Hetty D. Biddle, Mary D. Biddle, Thomas Williams and Elizabeth P. Williams, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a decree establishing of record the title of the plaintiff to the south 20 feet front of original lot 30, square 127, situate and being in the city of Washington, District of Columbia, as complete and perfect, and perpetually enjoining the defendants from asserting title thereto.

This order shall be published in the Washington Law Reporter and the Washington Post for the period required by the rule, and in the New York Herald once.

A. B. HAGNER, Associate Justice of the Supreme Court of the District of Columbia.

A true copy. Test: J. R. Young, Clerk.
30 [Filed July 26, 1892. J. R. Young, Clerk.]

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WASHINGTON, D. C., - - - AUGUST 18, 1892

**Acts and Joint Resolutions of the 52d
Congress, relating to District of
Columbia matters, continued
from No. 32 of Vol. XX.**

**An act to amend the charter of the Eckington
and Soldiers' Home Railroad Company.**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the charter of the Eckington and Soldiers' Home Railroad Company be, and the same is hereby, amended so as to authorize said company to lay its tracks and to run its cars thereon through and along the following named streets and avenues: Beginning at the intersection of Fifth and G streets northwest, east along G street to New Jersey avenue and First street; thence south along First street northwest to C street northwest; thence east along C street to New Jersey avenue; thence south along New Jersey avenue to a point in the center of said avenue at a distance of not less than one hundred and fifty feet from the north curb line of B street north. Returning north along New Jersey avenue to D street; thence west on D street to First street northwest; thence north on First street to G street, and along G street to Fifth street northwest; also, beginning at the intersection of G street and New Jersey avenue; thence across New Jersey avenue to and along G street to North Capitol street; thence north along North Capitol street to New York avenue, connecting with its main line and North Capitol street branch: also beginning at the intersection of Fifth and G streets northwest; thence south on Fifth street to Louisiana avenue; thence southwesterly on Louisiana avenue to a point to be located by the Commissioners of the District of Columbia, east of Seventh street northwest, and returning by the same route to the said point of beginning; also beginning at the intersection of New Jersey avenue and C street northwest; thence east on C street to Stanton square; thence around Stanton square, on the south side thereof, to C street northeast and along C street to Fifteenth street northeast; thence north on Fifteenth street to D street northeast; thence west on D street to Fourth Street; thence south on Fourth street to and along C

street to New Jersey avenue and the point of beginning: *Provided*, That until C and D streets shall be paved and provided with sewers to Fifteenth street the company shall not be required to construct its road beyond Twelfth street; also beginning at the present terminus of the Eckington and Soldiers' Home road on Fourth street extended, thence along and wholly outside of the present Bunker Hill road, on land to be acquired by said company by gift or purchase and made a part of said road, to a point to be located by the Commissioners of the District of Columbia, west of Brooks station: *Provided*, That nothing contained in this act shall be taken to require the extension provided for in this clause before said road shall have been widened as herein provided for: *Provided further*, That the tracks of said company on Lincoln avenue shall be taken up within thirty days from the passage of this act, and the roadway shall be restored to public uses in such manner as the Commissioners of the District of Columbia shall direct: *Provided*, That horse power shall not be used on said line for traction purposes, and that if electric wires or cables are used to propel its cars over any of the routes hereby authorized within the limits of the city of Washington the same shall be placed underground.

Wherever the foregoing route or routes may coincide with the duly authorized route or routes of any other duly incorporated street railway company in the District of Columbia, both companies shall use the same tracks upon such fair and equitable terms as may be agreed upon by said companies; and in the event said companies shall fail to agree upon equitable terms, either of said companies may apply by petition to the supreme court of the District of Columbia, which shall hear and determine summarily the matter in due form of law, and adjudge to the proper party the amount of compensation to be paid therefor. Said company shall charge not exceeding five cents fare for one continuous ride from any point on its lines to the terminus of its main line or any of its branches: *Provided*, That the construction of said railroad on any street where there are or may be any mains, fixtures, or apparatus pertaining to the Washington Aqueduct shall be subject to such conditions as may be approved by the Secretary of War, which conditions must be obtained and be accepted in writing by said company before commencing any work on such street and no steam cars, locomotives, or passenger or other cars for steam railroads shall ever be run on the tracks of said company over any such main, fixture, or apparatus. The said railroad shall be subject to the requirements of section fifteen of the act of Congress approved February twenty-eight, eighteen hundred and ninety-one, entitled "An act to incorporate the Washington and Arlington Railway Company of the District of Columbia." The said company shall, before commencing work on said railroad on such street, deposit with the Treasurer of the United States to the credit of the Washington Aqueduct such sum as the Secretary of War may consider necessary to defray all the expenses that may be incurred by the United States in connection with the

inspection of the work of construction of said railroad on such street, and in making good any damages done by said company, or its works, or by any of its contracting agents, to any of said mains, fixtures, or apparatus, and in completing, as the Secretary of War may deem necessary, any of the work that the said company may neglect or refuse to complete and that the Secretary of War may consider necessary for the safety of said mains, fixtures, or apparatus, and the said company shall also deposit as aforesaid such further sums for said purposes at such times as the Secretary of War may consider necessary: *Provided*, That the said sums shall be disbursed like other moneys appropriated for the Washington Aqueduct, and whatever shall remain of said deposits at the end of one year after the completion of said railroad in such street shall be returned to said company on the order of the Secretary of War, with an account of their disbursement in detail: *And provided also*, That disbursements of said deposits shall, except in case of emergency, be made only on the order of the Secretary of War. The exercise of the rights by this act granted are to terminate at the pleasure of the Secretary of War in case of persistent neglect by said company, or by its successors, to make the deposits, or to comply with any of the conditions, requirements, and regulations aforesaid.

SEC. 2. That said company is authorized to increase its capital stock three hundred thousand dollars for the purpose of enabling it to extend and equip its line as provided in this act, and to redeem bonds issued to take care of present indebtedness incurred in building and equipping the road already constructed, and no additional bonds shall be issued by said company without special authority of Congress.

SEC. 3. That unless said extensions are commenced within three months and the cars run thereon within one year from the passage of this act, except as otherwise expressly provided for, the authority hereby granted shall be void: *Provided*, That said railroad shall be constructed on such grade and in such manner as shall be approved by the Commissioners of the District of Columbia.

SEC. 4. That Congress reserves the right to alter, amend, or repeal this act.

Approved, July 5, 1892.

An act to incorporate the District of Columbia Suburban Railway Company.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Richard K. Cralle, Charles E. Creecy, John T. Mitchell, M. F. Morris, J. W. Denver, L. G. Hine, Gilbert Moyers, S. E. Mudd, Robert A. Howard, W. I. Hill, John W. Childress, J. F. Kenney, D. W. Glassie, Harry Barton, Philemon W. Chew, T. C. Daniel, G. P. Davis, Jere Johnson and L. C. Loomis, and their associates successors, and assigns, are hereby created a body corporate by the name, style, and title of "The District of Columbia Suburban Railway Company," and by that name shall have perpetual succession, and shall be able to sue and be sued, plead and be impleaded, defend and be defended, in all courts of law and equity within the United States,

and may make and have a common seal. And said corporation is hereby authorized to construct and lay down a single or double track railway, as may be approved by the Commissioners of the District of Columbia, with the necessary switches, turn-outs, and other mechanical devices, in the District of Columbia, through and along the following routes: Beginning at the dividing line between the District of Columbia and the State of Maryland, on the Bladensburg road, and running thence along the said road so that the outer rail of said railway shall not be more than five feet from the eastern boundary of said Bladensburg road, to H street east; thence west on H street east to Seventh street east, over the tracks of the Columbia Railroad.

Also beginning at the junction of Philadelphia and Twelfth streets in Brookland and running south along Twelfth street; thence by such line as may be authorized by the Commissioners of the District of Columbia to the intersection of Patterson avenue with the Fairview road; thence along the Fairview, Corcoran and Mt. Olivet roads to Twelfth street extended; thence along twelfth street extended to the junction of Twelfth street east and Florida avenue.

Also beginning at the junction of Frankfort and Twenty-fourth streets in Langdon; thence along Twenty-fourth street to Cincinnati street; thence along Cincinnati street to and across Chapel road to Lafayette avenue; thence along Lafayette avenue and in line to Capitol street, Ivy City; thence along Capitol street to Mt. Olivet road; thence along Mt. Olivet road to Twelfth street extended.

Also from the intersection of Florida avenue with Twelfth street northeast, to H street northeast, on Twelfth street; thence west on H street over the tracks of the Columbia road to Seventh street east; thence south on Seventh street by single track to G street east; thence west on G street by single track to First street west; thence by a route to be laid down by the Commissioners of the District of Columbia across New Jersey avenue to the tracks of the Capitol, North O and South Washington Railroad; thence on the tracks of the last-named road on G street to Fourth street, continuing west on G street west to Fifth street; thence south on Fifth street west, in part over the tracks of the Metropolitan Railroad, to Louisiana avenue; thence southwesterly by double track on Louisiana avenue to a point to be located by the Commissioners of the District of Columbia east of Seventh street west. Returning north-easterly on Louisiana avenue to Fifth street west; thence over the tracks of the Metropolitan Railroad along Judiciary Square to Fourth street west; thence north on Fourth street west by single track to E street west; thence east on E street by single track to Eighth street east; thence north by single track on Eighth street to H street; thence east over the tracks of the Columbia railroad to Twelfth street; thence north on Twelfth street to Florida avenue: *Provided*, That all the routes herein mentioned shall be subject to the approval of the Commissioners of the District of Columbia, and those portions of said road between the District line and Florida avenue shall be fully constructed before the

cars of the said District of Columbia Suburban Railroad shall be run over any part of the said route within the limits of the city of Washington; Whenever a permanent system of streets and highways shall have been established and laid out in the suburban portion of the District contiguous to the route of this railroad, said company shall, when required by the Commissioners of the District, cause such changes to be made in the location of its tracks as said Commissioners shall require in order to make the route of said road conform to such streets and highway system. Wherever the route of this road coincides with that of a country road the railway shall be constructed along and outside of such road. Said company shall keep the space between its tracks, and two feet outside of its tracks in such condition as may be required by said Commissioners.

SEC. 2. That said company may run public carriages propelled by cable, electric, or other mechanical power: *Provided*, that if electric wires or cables be used within the limits of the city of Washington, the wires shall be placed underground, and the power used shall be subject to the approval of the said Commissioners; but nothing in this act shall allow the use of steam power or any motor which shall in its operation cause any noise or other disturbance which in the judgment of said Commissioners shall be inimical to the public safety or comfort: *Provided further*, That for the purpose of making a continuous connection the said company shall have the right to cross all streets, avenues, and highways necessary for this purpose: *Provided*, That whenever the foregoing route or routes may coincide with the route or routes of any duly incorporated street railway company in the District of Columbia the tracks shall be used by both companies, which are hereby authorized and empowered to use such tracks in common, upon such fair and equitable terms as may be agreed upon by said companies; and in the event the said companies fail to agree upon equitable terms, either of said companies may apply by petition to the supreme court of the District of Columbia, which shall immediately provide for proper notice to and hearing of all parties interested, and shall have power to determine the terms and conditions upon which and the regulations under which the company hereby incorporated shall be entitled so to use and enjoy the track of such other street railway company, and the amount and manner of compensation to be paid therefor: *And provided further*, That neither of the companies using such tracks in common shall be permitted to make the track so used in common the depot or general stopping place to await passengers, but shall only be entitled to use the same for the ordinary passage of its cars with the ordinary halts for taking up and dropping off passengers: *Provided*, That this shall not apply to or interfere with any station already established on any existing lines; that said corporation is authorized and empowered to propel its cars over the line of any other road or roads, which may be in the alignment with and upon such streets as may be covered by the route or routes as prescribed in this act, in accordance with the conditions hereinbefore contained; and that this corporation shall

construct and repair such portions of its road as may be upon the line or routes of any other road thus used; and in case of any disagreement with any company whose line of road is thus used, such disagreement may be determined summarily upon the application of either road to any court in said District having competent jurisdiction. Whenever more than one of the tracks of said railway shall be constructed on any of the public highways in the District, the width of space between the tracks shall not exceed four feet, unless otherwise ordered by the Commissioners of the District of Columbia.

SEC. 3. That said company shall receive a rate of fare not exceeding five cents per passenger for any distance on its route within the District of Columbia, and the said company may make arrangements with all existing railway companies in the District of Columbia for the interchange of tickets in payment of fare on its road: *Provided*, That within the District limits six tickets shall be sold for twenty-five cents.

SEC. 4. That said company shall, on or before the fifteenth of January of each year, make a report to Congress, through the Commissioners of the District of Columbia, of the names of all the stockholders therein and the amount of stock held by each, together with a detailed statement of the bonded and other indebtedness and the receipts and expenditures, from whatever source and on whatever account, for the preceding year ending December the thirty-first, and such other facts as may be required by any general law of the District of Columbia, which report shall be verified by affidavit of the president and secretary of said company and if said report is not made at the time specified, or within ten days thereafter, such failure shall of itself operate as a forfeiture of this charter, and it shall be the duty of the Commissioners to cause to be instituted proper judicial proceedings therefor; and said company shall pay to the District of Columbia, in lieu of personal taxes upon personal property, including cars and motive power, each year, four per centum of its gross earnings, which amount shall be payable to the collector of taxes at the time and in the manner that other taxes are now due and payable, and subject to the same penalties on arrears; and the franchise and property of said company, both real and personal, to a sufficient amount may be seized and sold in satisfaction thereof, as now provided by law for the sale of other property for taxes; and said four per centum of its gross earnings shall be in lieu of all other assessments of personal taxes upon its property used solely and exclusively in the operation and management of said railway. Its real estate shall be taxed as other real estate in the District: *Provided*, That its tracks shall not be taxed as real estate.

SEC. 5. That the said railway shall be constructed of good materials and in a substantial and durable manner, with the rails of the most approved pattern, to be approved by the Commissioners of the said District, laid upon an even surface with the pavement of the street, and the gauge to correspond with that of other city railways.

SEC. 6. That the said corporation hereby created shall be bound to keep said tracks, and

for the space of two feet beyond the outer rails thereof, and also the space between the tracks, at all times in as good order as the streets and highways through which it passes subject to the approval of the said Commissioners, without expense to the United States or to the District of Columbia.

SEC. 7. That nothing in this act shall prevent the District of Columbia at any time, at its option, from altering the grade or otherwise improving all avenues and streets and highways occupied by said road, or from so altering and improving such streets and avenues and highways, and the sewerage thereof, as may be under its authority and control; and in such event it shall be the duty of said company to change its said railroad so as to conform to such grade as may have been thus established.

SEC. 8. That it shall be lawful for said corporation, its successors or assigns, to make all needful and convenient trenches and excavations in any of said streets, or places where said corporation may have the right to construct and operate its road, and place in such trenches and excavations all needful and convenient devices and machinery for operating said railroad in the manner and by the means aforesaid, subject to the approval of the said Commissioners. But whenever such trenches or excavations shall interfere with any sewer, gas, or water pipes, or any subways or conduits, or any public work of the kind which has been ordered by the Commissioners, then the expense necessary to change such underground construction shall be borne by the said railway company: *Provided*, That wherever the railroad shall be built along any road, the space between the inner rail of said railroad and the roadway shall be graded and put in good order for public use at the expense of the company and subject to the approval of the Commissioners of the District of Columbia: *Provided also*, That the construction of said railroad on any street where there are or may be any mains, fixtures, or apparatus pertaining to the Washington Aqueduct shall be subject to such conditions as may be approved by the Secretary of War, which conditions must be obtained and be accepted in writing by said company before commencing any work on such street; and no steam cars, locomotives, or passenger or other cars for steam railroads shall ever be run on the tracks of said company over any such main, fixture, or apparatus. The said railroad shall be subject to the requirements of section fifteen of the act of Congress approved February twenty-eighth, eighteen hundred and ninety-one, entitled "An act to incorporate the Washington and Arlington Railway Company of the District of Columbia." The said company shall, before commencing work on said railroad on such street, deposit with the Treasurer of the United States to the credit of the Washington Aqueduct such sum as the Secretary of War may consider necessary to defray all the expenses that may incurred by the United States in connection with the inspection of the work of construction of said railroad on such street, and in making good any damages done by said company, or its works, or by any of its contracting agents, to any of said mains, fixtures,

or apparatus, and in completing, as the Secretary of War may deem necessary, any of the work that the said company may neglect or refuse to complete and that the Secretary of War may consider necessary for the safety of said mains, fixtures, or apparatus, and the said company shall also deposit as aforesaid such further sums for said purposes at such times as the Secretary of War may consider necessary: *Provided*, That the said sum shall be disbursed like other moneys appropriated for the Washington Aqueduct, and that whatever shall remain of said deposits at the end of one year after the completion of said railroad in such street shall be returned to said company on the order of the Secretary of War, with an account of its disbursement in detail: *And provided also*, That disbursements of said deposits shall, except in cases of emergency, be made only on the order of the Secretary of War. The exercise of the rights by this act granted are to terminate at the pleasure of the Secretary of War in case of persistent neglect by said company, or by its successors, to make the deposits, or to comply with any of the conditions, requirements, and regulations aforesaid.

SEC. 9. That it shall also be lawful for said corporation, its successors or assigns, to erect and maintain, at such convenient and suitable points along its lines as may seem most desirable to the board of directors of the said corporation and subject to the approval of the said Commissioners, an engine house or houses, boiler house, and all other buildings necessary for the successful operation of a cable-motor, electric, pneumatic, or other railroad.

SEC. 10. That it shall not be lawful for said corporation, its successors or assigns, to propel its cars over said railroad, or any part thereof, at a rate of speed exceeding that which may be fixed from time to time by the said Commissioners, and for each violation of this provision said grantees, their successors or assigns, as the case may be, shall be subject to a penalty of fifty dollars, to be recovered in any court of competent jurisdiction at the suit of the Commissioners of the said District.

SEC. 11. That the line of said railway company shall be commenced within six months and completed within two years from the passage of this act, otherwise this act shall be of no effect.

SEC. 12. That said company is hereby authorized to issue its capital stock to an amount not to exceed two hundred and fifty thousand dollars in shares of one hundred dollars each. Said company shall require the subscribers to the capital stock to pay in cash to the treasurer appointed by the corporators the amounts severally subscribed by them as follows, namely: Ten per centum at the time of subscribing and the balance of such subscription to be paid at such times and in such amounts as the board of directors may require; excepting that fifty per centum shall be paid in within twelve months, and no subscription shall be deemed valid unless the ten per centum thereof shall be paid at the time of subscribing as hereinbefore provided; and if any stockholder shall refuse or neglect to pay any installment as aforesaid, or as required by the resolution of the board of direc-

tors, after reasonable notice of the same, the said board of directors may sell at public auction, to the highest bidder, so many shares of his stock as shall pay said instalments, and the person who offers to purchase the least number of shares for the assessment due shall be taken to be the highest bidder, and such sale shall be conducted under such general regulations as may be adopted in the by-laws of said company; but no stock shall be sold for less than the total assessments due and payable or said corporation may sue and collect the same from any delinquent subscriber in any court of competent jurisdiction.

SEC. 13. That within thirty days after the passage of this act the corporators named in the first section, their associates, successors, or assigns, or a majority of them, or, if any refuse or neglect to act, then a majority of the remainder, shall meet at some convenient and accessible place in the District of Columbia for the organization of said company and for the receiving subscriptions to the capital stock of the company: *Provided*, That every subscriber shall pay at the time of subscribing ten per centum of the amount by him subscribed to the treasurer appointed by the corporators, or his subscription shall be null and void: *Provided further*, That nothing shall be received in payment of the ten per centum at the time of subscribing except lawful money or certified checks from any established national bank. And when the books of subscription to the capital stock of said company shall be closed the corporators named in the first section, their associates, successors, or assigns, or a majority of them, and in case any of them refuse or neglect to act, then a majority of the remainder, shall, within twenty days thereafter, call the first meeting of the stockholders of said company to meet within ten days thereafter for the choice of directors, of which public notice shall be given for five days in two daily newspapers published in the city of Washington, and by written personal notice to be mailed to the address of each stockholder by the clerk of the corporation; and in all meetings of the stockholders each share shall entitle the holder to one vote, to be given in person or by proxy: *Provided*, That it shall be unlawful for the company hereby incorporated to consolidate with any other railroad company now in existence, or which may hereafter be chartered, and any such consolidation shall of itself operate as a forfeiture of this charter. Nor shall the charter or franchise herein granted be sold or transferred to any company or person until the road shall have been fully constructed.

SEC. 14. That the said company shall place first-class cars on said railways, with all the modern improvements for the convenience and comfort of passengers, and shall run cars thereon as often as the public convenience may require; the time table or schedule of time to be approved by the said Commissioners of the District of Columbia.

SEC. 15. That the company may buy, lease, or construct such passenger rooms, ticket offices, workshops, depots, lands, and buildings as may be necessary, at such points on its line as may be approved by the said Commissioners.

SEC. 16. That all articles of value that may be inadvertently left in any of the cars or other vehicles of the said company shall be taken to its principal depot and entered in a book of record of unclaimed goods, which book shall be open to the inspection of the public at all reasonable hours of business.

SEC. 17. That the government and direction of affairs of the company shall be vested in a board of directors, nine in number, who shall be stockholders of record, and who shall hold their office for one year, and until others are duly elected and qualified to take their places as directors; and the said directors (a majority of whom shall be a quorum) shall elect one of their number to be president of the board, who shall also be president of the company, and they shall also choose a vice-president, a secretary, and treasurer, who shall give bond with surety to said company in such sum as the said directors may require for the faithful discharge of his trust. In the case of a vacancy in the board of directors by the death, resignation, or otherwise, of any director, the vacancy occasioned thereby shall be filled by the remaining directors.

SEC. 18. That the directors shall have the power to make and prescribe such by-laws, rules, and regulations as they shall deem needful and proper touching the disposition and management of the stock, property, estate, and effects of the company, not contrary to the charter or to the laws of the United States and the ordinances of the District of Columbia.

SEC. 19. That there shall be at least an annual meeting of the stockholders for choice of directors, to be held at such time and place, under such conditions, and upon such notice as the said company in their by-laws may prescribe; and said directors shall annually make a report in writing of their doings to the stockholders.

SEC. 20. That the said company shall have at all times the free and interrupted use of its roadway, and if any person or persons shall willfully, mischievously and unnecessarily obstruct or impede the passage of cars of said railway company with a vehicle or vehicles, or otherwise, or in any manner molest or interfere with passengers or operatives while in transit, or destroy or injure the cars of said railway or depots, stations, or other property belonging to said railway company, the person or persons so offending shall forfeit and pay for each such offense not less than twenty-five nor more than one hundred dollars to said company, to be recovered as other fines and penalties in said District, and shall remain liable, in addition to said penalty, for any loss or damage occasioned by his or her or their act as aforesaid; but no suit shall be brought unless commenced within sixty days after such offense shall have been committed.

SEC. 21. That the said District of Columbia Suburban Railway Company shall have the right of way across such other railways as are now in operation within the limits of the lines granted by this act, and is hereby authorized to construct its said road across such other railways in a manner to be approved by the Commissioners of the District: *Provided*, That it shall not interrupt the travel of such other railways in such construction.

SEC. 22. That no person shall be prohibited the right to travel on any part of said road or ejected from the cars by the company's employees for any other cause than that of being drunk, disorderly, unclean, or contagiously diseased, or refusing to pay the legal fare exacted, or to comply with the lawful general regulations of the company.

SEC. 23. This act may at any time be altered, amended, or repealed by the Congress of the United States.

SEC. 24. That in the event that the company should not be able to come to an agreement with the owner or owners of any land through which the said road may be located to pass, proceedings for the condemnation for the use of the company of so much of said land as may be required, not exceeding one hundred feet in width, may be instituted in the usual way in the supreme court of the District of Columbia, under such rules and regulations as said court may prescribe for such purposes.

Approved, July 5, 1892.

An act for preparation of a site and erection of a pedestal for statue of late General William T. Sherman, and appropriating the sum of fifty thousand dollars therefor.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the sum of fifty thousand dollars be, and is hereby, appropriated for the preparation of a site and the erection of a pedestal for a statue of the late General William T. Sherman in the city of Washington; said site to be selected by and said pedestal to be erected under the supervision of the president of the Society of the Army of the Tennessee, the Secretary of War, and the Major-General Commanding the Army, and any part of the sum hereby appropriated not needed for preparation of site and the erection of a pedestal may be used and expended in the completion of said statue of the late General William T. Sherman.

Approved, July 5, 1892.

An act confirming title to lands in the subdivision of square two hundred and six in the City of Washington District of Columbia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the subdivision of square two hundred and six in the City of Washington, District of Columbia, made by C. P. Patterson and recorded in book R. W. page one hundred and two, in the office of the surveyor of the said District, be, and the same is hereby, confirmed so far as the said subdivision embraced any part of the original alleys in said square, and the title of the persons claiming any part or parts of said original alleys under the owner of the original lots in said square at the time said subdivision was made, is hereby confirmed: *Provided*, That the area dedicated to the public in the subdivision made by said Patterson is at least as great as that of the alleys in the said original division of said square into lots.

Approved, July 6, 1892.

An act to allow thirty days' leave of absence to employees in the Bureau of Engraving and Printing.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the employees of the Bureau of Engraving and Printing, including the pieceworkers, shall be allowed leave of absence with pay, not exceeding thirty days in any one year, under such regulations and at such time or times as the Chief of the Bureau, with the approval of the Secretary of the Treasury, may prescribe and designate: *Provided*, That the length of the leave of absence of any employee of said Bureau doing piecework, and the pay during such leave of absence, shall be determined by the average amount of work done by such person and the pay therefor during the several months of the year.

Approved, July 6, 1892.

An act to punish the carrying or selling of deadly or dangerous weapons within the District of Columbia, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall not be lawful for any person or persons within the District of Columbia to have concealed about their person any deadly or dangerous weapons, such as daggers, air-guns, pistols, bowie-knives, dirk knives or dirks, blackjack, razors, razor blades, sword canes, slung shot, brass or other metal knuckles.

SEC. 2. That it shall not be lawful for any person or persons within the District of Columbia to carry openly any such weapons as hereinbefore described with intent to unlawfully use the same, and any person or persons violating either of these sections shall be deemed guilty of a misdemeanor, and upon conviction thereof shall, for the first offense, forfeit and pay a fine or penalty of not less than fifty dollars nor more than five hundred dollars, of which one half shall be paid to any one giving information leading to such conviction, or be imprisoned in the jail of the District of Columbia not exceeding six months, or both such fine and imprisonment, in the discretion of the court: *Provided*, That the officers, non-commissioned officers, and privates of the United States Army, Navy, or Marine Corps, or of any regularly organized Militia Company, police officers, officers guarding prisoners, officials of the United States or the District of Columbia engaged in the execution of the laws for the protection of persons or property, when any of such persons are on duty, shall not be liable for carrying necessary arms for use in performance of their duty: *Provided, further*, that nothing contained in the first or second sections of this act shall be so construed as to prevent any person from keeping or carrying about his place of business, dwelling house, or premises any such dangerous or deadly weapons, or from carrying the same from place of purchase to his dwelling house or place of business or from his dwelling house or place of business to any place where repairing is done, to have the same repaired, and back again: *Provided further*, That nothing contained in the first or second sections of this act

shall be so construed as to apply to any person who shall have been granted a written permit to carry such weapon or weapons by any judge of the police court of the District of Columbia, and authority is hereby given to any such judge to grant such permit for a period of not more than one month at any one time, upon satisfactory proof to him of the necessity for the granting thereof; and further, upon the filing with such judge of a bond, with sureties to be approved by said judge, by the applicant for such permit, conditioned to United States in such penal sum as said judge shall require for the keeping of the peace, save in the case of necessary self-defense by such applicant during the continuance of said permit, which bond shall be put in suit by the United States for its benefit upon any breach of such condition.

SEC. 3. That for the second violation of the provisions of either of the preceding sections the person or persons offending shall be proceeded against by indictment in the supreme court of the District of Columbia, and upon conviction thereof shall be imprisoned in the penitentiary for not more than three years.

SEC. 4. That all such weapons as hereinbefore described which may be taken from any person offending against any of the provisions of this act shall, upon conviction of such person, be disposed of as may be ordered by the judge trying the case, and the record shall show any and all such orders relating thereto as a part of the judgment in the case.

SEC. 5. That any person or persons who shall, within the District of Columbia, sell, barter, hire, lend or give to any minor under the age of twenty-one years any such weapon as hereinbefore described shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, pay a fine or penalty of not less than twenty dollars nor more than one hundred dollars, or be imprisoned in the jail of the District of Columbia not more than three months. No person shall engage in or conduct the business of selling, bartering, hiring, lending, or giving any weapon or weapons of the kind hereinbefore named without having previously obtained from the Commissioners of the District of Columbia a special license authorizing the conduct of such business by such person, and the said Commissioners are hereby authorized to grant such license, without fee therefor, upon the filing with them by the applicant therefor of a bond with sureties to be by them approved, conditioned in such penal sum as they shall fix to the United States for the compliance by said applicant with all of the provisions of this section; and upon any breach or breaches of said condition said bond shall be put in suit by said United States for its benefit, and said Commissioners may revoke said license. Any person engaging in said business without having previously obtained said special license shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced to pay a fine of not less than one hundred dollars nor more than five hundred dollars, of which one half shall be paid to the informer, if any, whose information shall lead to the conviction of the person paying said fine. All persons whose business it is to sell barter, hire, lend or give any such weapon

or weapons shall be and they hereby, are, required to keep a written register of the name and residence of every purchaser, barterer, hirer, borrower, or donee of any such weapon or weapons, which register shall be subject to the inspection of the major and superintendent of Metropolitan Police of the District of Columbia, and further to make a weekly report, under oath to said major and superintendent of all such sales, barterings, hirings, lendings, or gifts. And one half of every fine imposed under this section shall be paid to the informer, if any, whose information shall have led to the conviction of the person paying said fine. Any police officer failing to arrest any person guilty in his sight or presence and knowledge of any violation of any section of this act shall be fined not less than fifty nor more than five hundred dollars.

SEC. 6. That all acts or parts of acts inconsistent with the provisions of this act be, and the same hereby are, repealed.

Approved, July 13, 1892.

An act to vest the title of public square eleven hundred and two, in the city of Washington, District of Columbia, in the trustees of the Fourth Street Methodist Episcopal Church, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever there shall have been a full compliance with the provisions of section two of this act, as evidenced by the certificate of the Commissioners of the District of Columbia, all that tract of land situate in the city of Washington, District of Columbia, and mentioned and described as public square numbered eleven hundred and two in the deed of conveyance bearing date December twenty-second, eighteen hundred and twenty-four, and recorded in the office of the recorder of deeds for the District of Columbia, in liber W B, numbered thirteen, folio one hundred and ninety-two, and those that follow of the same date, from J. Elgar, United States commissioner of public buildings, by authority conferred upon him under the act of Congress approved April twenty-ninth, eighteen hundred and sixteen, to Israel Little, James Friend, Nathaniel Brady, Ambrose White, Patrick Kain, William Speiden, and George Adams, trustees of the Methodist Society at the Ebenezer Station, in the city of Washington, District of Columbia, be, and the same is hereby granted in fee simple to Theodore Sniffin, Robert W. Dunn, Edward F. Casey, Francis A. Belt, Thomas E. Trazzare, James T. Harrison, Maurice Otterback, Robert E. Cook, and Arthur A. Chapin, and their successors and assigns, trustees of the Fourth Street Methodist Episcopal Church, the successor of and the same church organization as the Methodist Society at the Ebenezer Station in the said city, as and for the benefit of the said Fourth Street Methodist Episcopal Church, freed from all the conditions and limitations mentioned in said deed of conveyance.

SEC. 2. That the said trustees last above mentioned, and their successors and assigns, are hereby authorized and required, under the direction of the Commissioners of the District

of Columbia, to remove, within twelve months from the approval of this act, the dead heretofore interred in any part of the said public square to some suitable public cemetery within the District of Columbia, at the expense of the said Fourth Street Methodist Episcopal Church Society.

Approved, July 18, 1892.

An act to amend "An act to define the jurisdiction of the police court of the District of Columbia," approved March third, eighteen hundred and ninety-one.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That an act entitled "An act to define the jurisdiction of the police court of the District of Columbia," approved March third, eighteen hundred and ninety-one, be amended as follows: Strike out all of section two of said act, and in lieu thereof insert the following:

"SEC. 2. That prosecutions in the police court shall be on information by the proper prosecuting officer. In all prosecutions within the jurisdiction of said court in which, according to the Constitution of the United States, the accused would be entitled to a jury trial, the trial shall be by jury, unless the accused shall in open court expressly waive such trial by jury and request to be tried by the judge, in which case the trial shall be by such judge, and the judgment and sentence shall have the same force and effect in all respects as if the same had been entered and pronounced upon the verdict of a jury. In all cases where the accused would not by force of the Constitution of the United States be entitled to a trial by jury, the trial shall be by the court without a jury unless in such of said last-named cases wherein the fine or penalty may, be fifty dollars or more, or imprisonment as punishment for the offense may be thirty days or more, the accused shall demand a trial by jury, in which case the trial shall be by jury. In all cases where the said court shall impose a fine it may, in default of the payment of the fine imposed, commit the defendant for such a term as the court thinks right and proper, not to exceed one year."

SEC. 2. That section ten hundred and sixty of the Revised Statutes relating to the District of Columbia be, and the same is hereby, amended so that said section shall read:

"SEC. 1060. The clerk and the deputy clerks, and such other officers of the court as may be assigned by the judges of the court for that purpose, shall have the power to administer oaths and affirmations."

Approved, July 23, 1892.

Joint Resolution to suspend the issue of permits to erect dwelling houses in alleys in the District of Columbia.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Commissioners of the District of Columbia are hereby instructed not to issue any more permits for buildings intended for human habitation, in alleys less than forty feet in width, in the District of Columbia, during the Fifty-Second Congress, and

that all such permits, heretofore granted on alleys less than the width aforesaid, shall be revoked, where construction shall not already have been actually begun.

Approved, May 12, 1892.

Joint resolution relating to the Memorial Association of the District of Columbia.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in pursuance of a certificate of incorporation of the "Memorial Association of the District of Columbia," signed by Melville W. Fuller, John M. Schofield, John W. Foster, B. H. Warder, S. P. Langley, A. B. Hagner, J. C. Bancroft Davis, Walter S. Cox, S. H. Kauffman, A. R. Spofford, John Hay, J. W. Douglass, Myron M. Parker, Gardiner G. Hubbard, W. D. Davidge, S. S. Franklin, Charles C. Glover and Teunis S. Hamlin, and recorded March twenty-first, eighteen hundred and ninety-two, the President of the United States, the President of the Senate, and the Speaker of the House of Representatives be, and they hereby are, authorized and directed to appoint each six citizens of the District of Columbia to be members of said association, and to serve for the terms of one, two, and three years respectively, as they may determine by lot; and thereafter to appoint annually each two members to serve for three years.

Approved, June 14, 1892.

Joint resolution authorizing the resubdivision of square six hundred and seventy-three, in the city of Washington.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the subdivision of square six hundred and seventy-three, as the same now exists, be, and the same is hereby, abolished, and that the owners of the said square are hereby authorized and empowered to resubdivide the same, subject to the approval of the Commissioners of the District of Columbia.

Approved, June 24, 1892.

CONTEMPT—Reflections on Judge and Grand Jury.—The publisher of an article reflective on a grand jury, at any time during its session, tending to bring its members into disrepute and embarrass an investigation as to the commission of a crime, is liable for contempt, even though such investigation had been suspended with no intention at the time to pursue it further. *Fishback v. State*, (Ind.) 30 N. E. Rep., 1088.

POLICE COURTS—Habeas Corpus.—The writ of habeas corpus cannot be used for the purpose of inquiring collaterally into the title of an officer to exercise the functions of his office. Nothing is better understood than that a writ of habeas corpus cannot be turned into a quo warranto. If any existing jurisdiction is exercised by an officer *de facto* filling office, the prisoner cannot collaterally attack such officer's title to the office he is filling, and it is only the right of the prisoner that we can consider. *Miles v. Westcott*, mayor, N. J. S. C., 15 N. J. Law Jour., 175.

Supreme Court of the District of Columbia.
IN GENERAL TERM.

ISAAC BRAXTON, JR., AND JOHN BRAXTON

v.

NATHANIEL BRAXTON ET AL.

1. Upon the death of the equitable owner of the real estate in question his equitable title descended to and vested in his heirs at law, and the deed conveying the legal title to his widow must be held to be in trust for his heirs.
2. The heirs of Isaac Braxton, Sr., having been the two complainants, Isaac Braxton, Jr., and John Braxton, also the defendant Nathaniel Braxton; and Eliza, the widow of said Isaac, Sr., having, without consideration, conveyed the legal title to said Nathaniel, it is *Held*, that the latter holds the same subject to the two-thirds interest of the said Isaac, Jr., and John.
3. But, out of the proceeds the said Nathaniel is entitled to be reimbursed for the \$200 which he paid to discharge the obligation of his father, Isaac, Sr., against the property, and the \$150 trust thereon, created by his mother, Eliza, before conveyance to him.
4. The said Nathaniel having conveyed his interest in the property to trustees to secure payment of a loan of \$1,200, equity will require that his interest of one-third be subject to the payment of said loan, the proceeds of which he received and applied to his own use.
5. As the said deed of trust to secure payment of \$1,200 also conveyed another tract of land owned by Nathaniel it is held that this tract must be first subjected to the payment of said loan.
6. Nathaniel is to be charged with the use and occupation of the premises since his assumed purchase thereof, and credited with any necessary and substantial improvements made by him, and with all taxes which he has paid.
7. As the party for whose security the \$1,200 trust was executed, had no notice of the equities of the complainants, both she and her assignee were entitled to the security afforded by said trust.

In Equity. No. 12,144. Decided February 10, 1892.

Chief Justice BINGHAM and Justices Cox and JAMES sitting.

Messrs. A. S. WORTHINGTON and E. L. SCHMIDT for complainant.

Mr. B. F. LEIGHTON for defendant.

Chief Justice BINGHAM delivered the opinion of the Court:

The complainants seek to have a trust declared in their favor on property known as the east half of lot 11 in the Howard University subdivision of the farm of J. A. Smith, commonly known as "Effingham," in the District of Columbia. The complainants claim that the right to this relief grows out of the following alleged state of facts: On February 7, 1870, Isaac Braxton, since deceased, together with one Henry Jackson, contracted with the Howard University to buy said lot 11 for seven hundred and twenty-four dollars and sixty-eight cents. Jackson subsequently paid his half of that amount and received a deed from the University

for the west one-half of said lot in which it was recited that it was executed in pursuance of the before mentioned contract. Isaac Braxton, Sr., died intestate July 9, 1874, having paid two hundred dollars on said contract, and built a residence on the east half of said lot. He left surviving him his widow, Eliza, and four children, named Isaac, Jr., and John, complainants, and Nathaniel, defendant, and also a son named Morris, the last of whom is believed to be dead, having been absent and not heard from for more than seven years. On December 24, 1875, the Howard University made a deed conveying the east one-half of lot 11, reciting that it was in pursuance of said contract, to Eliza Braxton, widow of Isaac. On July 18, 1881, while, as is alleged by the complainants, Eliza Braxton, was in feeble health and living in the same house with Nathaniel Braxton, and apart from the complainants, she, without any valuable consideration, made a deed of the said east half of lot 11 to the defendant, Nathaniel Braxton. It is further urged that she had often told the complainants that they should have their equal share of the property after her death. Nathaniel subsequently mortgaged the premises to secure a loan of \$1,200, and the defendants Johnson and Caywood are trustees to Middleton, payee in the notes, and the Howard University is the present holder of the notes represented by the loan. The facts so alleged by the complainants are, in the main, admitted by the defendant, Nathaniel Braxton, and by the Howard University, but some of them are explained and some additional facts are averred in their answer to avoid the force of the facts admitted. The Howard University explains that in the lifetime of Isaac Braxton, he was in default in making his payments according to the provisions of the contract, and that there was a provision in the contract providing for the forfeiture of the rights of the purchaser Braxton, in the event that he became in default, at the option of the Howard University, and that the Howard University after he became in default served upon Braxton a written notice advising him that he was not only in default, but in consequence of it, the Howard University availed itself of the privilege in the contract of forfeiture and advising him that his interest was forfeited and his payments, so far as made, should be regarded as payments for the fair rent of the premises during the time that he was in possession. Thereupon it is said by the Howard University that an agreement was made between it and Mrs. Braxton, the wife of Isaac Braxton, by

which she became the purchaser, and by which she undertook to make the payments that were still due upon the property according to the contract with Isaac Braxton; and thereafter she did make payments to the University for the land until about the time that she conveyed in 1881 to her son Nathaniel Braxton. But previous to and about the time of the conveyance to her in 1875, she executed a deed of trust and secured a loan for \$150 and paid off the remainder of the purchase money to the Howard University. Nathaniel Braxton insists upon the same facts stated in the answer of the Howard University and further insists that he became the purchaser for a valuable consideration in 1881, from his mother, and that the deed which he received from his mother for the premises was in consideration of the sum of \$200 in hand paid; and he avers further that he afterwards paid a loan made by his mother of \$150, with accruing interest and costs in connection with it, and that the latter money was separate and apart from the \$200 which he avers he paid to his mother at the time of the execution of the deed by her to him. He denies that the complainants have any interest whatever, or that his mother ever promised them any interest in the property after her death, or that she would make a will by which they would get the property after her death; also that he paid taxes in arrears and current taxes and has made valuable improvements. Proof was taken by the complainants. There are certain interrogatories attached to the bill which are answered by Nathaniel Braxton and also by the Howard University, but that is all in the way of proof that comes from the defense in support of their answers. We think it is shown, taking the pleadings and the evidence produced by the complainants, that a contract was made between Isaac Braxton and Henry Jackson with the Howard University for the purchase of the land. That it is not shown that the condition of forfeiture supposed by the Howard University in their answer was actually included in the contract. The contract has not been produced and appears to have been lost or mislaid. Upon the part of the University it is simply a matter of supposition as to what it contained. The testimony of Jackson, who was the co-purchaser with Braxton of this entire lot, is to the effect that he never had heard of any such condition in the joint contract which he made with Braxton for the entire lot, nor was anything ever mentioned to him of a condition of forfeiture, either as between him and the University, or as between

Braxton and the University. There is then no evidence to support the averment in the answer with respect to a condition of forfeiture being in the contract, nor is there any evidence to support the averment in the answer of the University that an arrangement was made with Mrs. Braxton by which she became the substituted purchaser of this lot. The recital in the deed to Eliza Braxton that it is executed in pursuance of the contract with Isaac Braxton repels the idea that it was executed by virtue of any contract with her as alleged in the answer of the University. It is clearly shown that there was a contract in writing between Braxton and the Howard University; that he made payments upon it in his lifetime, leaving a sum due at his death; that he built a house, more or less valuable upon the lot and lived in it during his life and at his death the widow remained in possession. The execution of the deed to Mrs. Braxton by the Howard University, the execution of the deed of trust to secure the loan of \$150, and the payment of that sum to the Howard University appear to have been contemporaneous transactions. There is no positive evidence that the widow ever paid any sum of money of her own, after the death of her husband, until the date when she executed a deed of trust to secure a loan of money which she applied to the final payment of the purchase money to Howard University. There is some evidence that indicates that she could not have made any such payments. She was entirely destitute, and dependent, as it appears, upon the exertions of her sons, principally the complainants, and the kindness of her friends for her support. She was in feeble health and unable to labor, so as to earn money, and it is shown quite clearly that it would have been a matter of impossibility for her to have earned money or that she had money from any source which she could have appropriated to the payment of the purchase money after her husband's death, aside from the money that she borrowed when she received the title from the Howard University, the payment of which was secured as aforesaid by a deed of trust, no part of which was ever paid or satisfied during her lifetime. This deed of trust upon the premises was afterwards discharged and liquidated by Nathaniel. There is no sufficient evidence that Isaac Braxton ever surrendered his contract to the Howard University. Upon the death of Isaac Braxton his equitable title to the premises descended to and vested in his heirs at law, and the deed of the Howard University conveying the legal title to Mrs. Braxton must be held to

be in trust for his heirs. Nathaniel took the property with full knowledge of all the facts and we do not find from the evidence in the case that he ever paid any money beyond the discharge of the trust created by his mother for \$150 and something in the way of taxes and improvements either at the time of his purchase or since.

The evidence shows that Nathaniel Braxton, in the year 1889, executed a deed of trust upon this property to secure the payment of \$1,200, which he borrowed, to James B. Johnson and A. S. Caywood, trustees, for the benefit of Rosa Middleton, to whom the note was made payable, which note was negotiated to Mrs. Bowen, who advanced the money to Nathaniel Braxton.

The evidence further shows that Mrs. Bowen, through Johnson, one of the trustees, who was at the time of purchase by Isaac Braxton and has ever since been the Secretary of the University, negotiated the sale of the note to the Howard University, and it is at this time the holder and owner of the \$1,200 note secured by the said deed of trust upon this property.

Under the circumstances, we think, that there is a trust arising in a general way in favor of the heirs of Isaac Braxton, to recover the title and possession of this property. This, however, is subject to some equities. In the first place we think that whatever Nathaniel Braxton paid in the way of discharging the obligation which his father had entered into and which his mother subsequently assumed when she acquired the legal title, he has an equitable right to receive out of the proceeds of this property superior to the trust in favor of the complainants and himself, as heirs of Isaac Braxton. It appears from the evidence that he paid about the sum of \$200, and as he has conveyed his interest to trustees to secure the payment of \$1,200, the obligation for which is now held by the Howard University, equity will require that the latter be substituted to his right to receive the \$200 with accruing interest in favor of the complainants and that this amount be in discharge to the extent thereof of the \$1,200 note now held by the University. Again, Nathaniel Braxton being one of the heirs of Isaac Braxton and being entitled under this general declaration of trust to one-third of the net proceeds of the sale of these premises, his interest of one-third will be subject to payment of the loan of \$1,200 which he secured, the proceeds of which he received and as shown by the evidence applied to his private use.

We think the evidence shows that Mrs. Bowen was a *bona fide* purchaser without notice and that she was entitled to protection as against the equities of the complainants in this land when she owned the note, and being so entitled her assignee, the Howard University, is entitled to take her position in that respect. Although it might be said upon this record that the Howard University purchased with notice; yet, applying the familiar rule that a purchaser of a negotiable note before maturity who has notice of equities from one who has no notice of the same shall be protected to the same extent that his vendee would have been, it follows that the University must hold the \$1,200 note unaffected by the equities of the complainants and is entitled to a full discharge of the same from the proceeds of the sale of the land in question. And the same rule applies to the lien or security for the payment of the note created by the deed of trust which followed the assignment of the note to Bowen and from her to the University and is protected to the same extent as the note.

It was said, however, at the hearing, without dispute, that the deed of trust executed by Nathaniel Braxton contained another tract of land, owned by Nathaniel, which tract, since the decree in special term was made, has been sold and quite a large sum realized, but not sufficient to discharge the entire loan secured by the deed of trust executed by Nathaniel. This being so the heirs, who are complainants in this case, have the clear right to have the tract in which they have no interest, whether it has or has not been sold, first subjected to the payment of the loan made by Nathaniel of \$1,200 and when that shall have been done the Howard University will be entitled to have out of the proceeds of the tract first named, first, \$200, being the sum that Nathaniel paid to discharge the lien created upon this property by his mother; secondly, the one-third of the net proceeds which would otherwise go to Nathaniel; and finally, if after the application of the before mentioned funds in the order named, there shall yet remain some part of the debt evidenced by the note of \$1,200 unpaid, the same should be liquidated out of that portion of the proceeds of the sale of the tract originally purchased, as before stated, by Isaac Braxton, senior, which would otherwise belong to the plaintiffs under the decree in this case, and that any remainder of the fund arising from such last named sale be paid to the complainants.

A sale of the premises is ordered and the cause

remanded to the Equity Court with directions to refer the same to the Auditor to state an account between the complainant and Nathaniel Braxton, in which he shall be charged with the use and occupation of the premises since his assumed purchase of the same, and credited with any necessary and substantial improvements he has made thereon, and for all taxes that he has paid, and for all other orders necessary and proper for the full execution and enforcement of the decree in this court.

ACTION—On Contract—Pleading—Variance—Question for Jury—Dismissal. —(1) Plaintiffs sued on an alleged contract by which defendants promised to pay them \$100,000 for their assistance in procuring the contract for building a bridge to be awarded to defendants. By the written contract, as proved on the trial, defendants promised to pay plaintiffs a commission of five per cent. up to the amount of \$100,000, to be deducted from cash payments to defendants on the bridge contract, for assisting defendants in the financial arrangements necessary to complete the bridge within the time specified in the contract. *Held*, that this was a material variance, and plaintiff's action failed on the proof. (2) Where there is a material variance, and plaintiff's case fails on the proof, the court should dismiss the complaint, instead of directing a verdict for defendants. June 7, 1892. *Gallaudet v. Kellogg*. Opinion *per Curiam*. Justices O'Brien, Peckham and Maynard dissenting. 11 N. Y. Supp., 79. *Affirmed*.

CORPORATIONS—Non-user of Franchises—Dissolution—Pleading. —A complaint in an action by the people, for the dissolution of a corporation, alleging that defendant, a corporation, whose certificate stated its object to be the buying and selling of milk, had ever since its incorporation (nine years before) failed and neglected to act for the purposes embraced in its charter, and had never bought or sold milk, but that it was fraudulently incorporated in pursuance of an unlawful combination on the part of the milk dealers to control the market price at which it should be bought and sold, and that its sole business had been such unlawful control, states a cause of action for dissolution for non-user of corporate franchises, the allegations of conspiracy being sufficient to show that, though the corporation was a private one, it was to the public interest that it be dissolved. April 19, 1892. *People v. Milk Exchange*. Opinion by Peckham, J. 17 N. Y. Supp., 600, mem. *Affirmed*.

STREET RAILWAY—Crossing—Contributory Negligence—Street Railways—Rule as to looking and listening. —It is gross negligence to drive in front of a moving street car so near as to make a collision inevitable; such conduct defeats an action to recover for self-inflicted damages. It is error in a trial judge to leave a jury without any rule of law governing the duty of a driver when approaching a street railway. It may not be necessary to stop before approaching a street railway crossing, but it is necessary to look before driving on the track. *Carson v. F. St. & P. V. Pass. Rwy. Co.*, S. C. Pa., 15 N. S. Law Jour., 177.

ARBITRATION AND AWARD. —Effect of insufficient award—Powers of arbitrators—Waiver of oath.—(1) An informal award, signed and sworn to before a notary, and delivered by arbitrators to the parties to a submission to them as to whether a sum was due from defendant to plaintiff under a building contract, stating that plaintiff is entitled to receive his "final payment," is defective as an award as not ascertaining the amount due. (2) Having once made an award, arbitrators are *functus officio*, and cannot afterward execute a second award, though the first award was void by cause of defects therein. (3) Under section 2369, Code of Civil Procedure, which provides that before hearing any testimony arbitrators must be sworn, "unless the oath is waived by the written consent of the parties to the submission or their attorneys," there can be no waiver except in writing. *Cutter v. Cutter*, 48 N. Y., Super. Ct. Rep. 470-474, distinguished. Second Division, May 31, 1892. *Flannery v. Sahagian*. Opinion by Haight, J. 12 N. Y. Supp. 56, reversed.

ACCIDENT AT RAILROAD CROSSING—Crossing—Duty to look and listen—Question for Jury— A railway must be exonerated where a collision occurs at the crossing of a public highway between a traveler on the way and one of its trains, when the company has used such reasonable care to avoid the collision as ordinary prudence would suggest. A plaintiff administrator is not required, in all cases, to prove affirmatively that his intestate, who had been killed at the intersection of a public road with a railway, looked or listened for approaching trains. When, by reason of an omission or a neglect to sound the whistle or ring the bell of a locomotive as it is approaching a dangerous crossing, the vigilance of a traveler upon the wagon road is allayed, and he is led into a position or situation in which his life is jeopardized and finally lost, his lack of vigilance cannot be held to amount to culpable or concurring negligence, as a matter of law. *Hendrickson v. G. N. Rwy. Co.*, S. C. Minn., 51 N. W. Rep., 1044.

THE COURTS.

Supreme Court of the District of Columbia.

IN EQUITY.—New Suits.

July 20, 1892.

14083. Abigail C. Newman v. Louis P. Shoemaker et al. For injunction. Com. sol., John Ridout.

14084. Lillian B. Quintin v. Adolph M. Quintin. For divorce. Com. sol., J. C. White; Defts. sol., Watson Boyle.

July 21.

14085. George J. Seufferle v. Edward T. Matthews et al. To quiet title to part of lot 3, Sq. 448, and injunction. Com. sols., Edwards & Barnard.

July 22.

14086. Mary C. Shamwell et al. v. Joseph Matthews et al. For reconveyance and injunction. Com. sol., C. A. Brandenburg.

14087. Emily B. Freeman et al. v. Henry W. Freeman et al. For partition. Com. sol., C. A. Brandenburg.

14088. Abbie M. Campbell v. Edward R. Campbell. For alimony. Com. sols., Carus & Miller.

July 23.

14089. Francis E. McAllister v. Nicholas Studer et al. To sell and partition. Com. sol., W. H. Sholes.

14090. Charles Rauscher v. Amelia Rauscher. For divorce. Com. sol., H. E. Davis.

14091. City Investment Company v. Bartow L. Walker et al. For specific performance. Com. sol., John Ridout.

July 25.

14092. Ada L. Brundage v. Warren C. Brundage. For divorce. Com. sol., S. S. Henkle.

July 26.

14093. Susan M. White v. William C. White. For divorce. Com. sol., N. Dumont.

July 27.

14094. Harvey Spaulding v. John W. Thompson et al. For injunction to restrain sale. Com. sol., E. W. Spalding.

14095. Adam Myers, alleged lunatic. Upon petition of Commissioners, D. C. De lunatico inquirendo. Com. sol., G. C. Hazleton.

14096. John Theurer, alleged lunatic. Upon petition of Commissioners, D. C. De lunatico inquirendo. Com. sol., G. C. Hazleton.

14097. Ann E. Jenkins, alleged lunatic. Upon petition of Commissioners, D. C. De lunatico inquirendo. Com. sol., G. C. Hazleton.

14098. Isaac Cortnor, alleged lunatic. Upon petition of Commissioners, D. C. De lunatico inquirendo. Com. sol., G. C. Hazleton.

14099. Capitol Hill Brick Company v. Mary L. Hoover et al. To enforce mechanics' lien. Com. sol., W. H. Sholes.

14100. Mary C. Mitchell v. Agnes L. W. Peugh et al. To set aside deed, and for an account of rent. Com. sol., W. A. Johnson.

14101. Meyer B. Newman v. Wm. S. Plager et al. Judgment creditor's bill. Com. sol., Howard P. Okie.

July 28.

14102. Simeon T. Neal v. Mary C. Neal. For divorce. Com. sols., Fulton & Edwards.

14103. J. B. Buckley, exr. of Samuel Scott, v. Anna Scott, widow, et al. To sell interest in proceeds of sale. Com. sols., Smith & Albright.

14104. Henry E. Davis, exr., et al. v. R. T. Morsell et al. To annul sale and enjoin conveyance. Com. sol., H. E. Davis.

August 2.

14105. Sarah E. Howard v. David A. Howard. For divorce. Com. sol., S. A. Cox.

14106. Daniel F. Lee v. Patrick J. Whalen. Injunction. Com. sol., W. Wheeler.

14107. Simon Thoms v. Mattie Thoms. For divorce. Com. sol., G. M. Ambler.

14108. Barbara T. Juneman v. Edward T. Matthews et al. To quiet title. Com. sol., Edwards & Barnard.

14109. Fred S. Breyfogle et al. v. James E. Kahan. For account, receiver and injunction. Com. sols., W. S. Abert and R. Hagner.

AT LAW—New Suits.

June 15, 1892.

33062. Priscilla E. Campbell, by next friend, Edgar Ball, v. The Richmond & Danville RR. Co. Damages, \$10,000. Plffs. attys., W. W. Armstrong and Edmund Burke.

33063. John B. Kendall v. The District of Columbia. Damages, \$15,000. Plffs. attys., R. Hagner and Shellabarger & Wilson.

33064. James L. Barbour et al. v. James H. Marr et al. Account, \$593. Plffs. attys., Shepard & Lavender.

33065. Louise Muehleisen v. John H. Shea. Account, \$242.90. Plffs. attys., Sheppard & Lavender.

33066. Edmund G. Wheeler v. The District of Columbia. Damages, \$24,000. Plffs. attys., Shellabarger & Wilson and R. Hagner.

33067. Leigh Chalmers v. Harriett T. Green. Note, \$1,000. Plffs. atty., J. J. Johnson.

33068. The Washington Brick Machine Co. v. Chas. D. Volland. Note and account, \$434.75. Plffs. atty., Wm. F. Mattingly.

33069. David Moore et al. v. Annie E. Barbour et al. Ejectment. Plffs. attys., Cole & Cole.

June 17.

33070. John A. Stanley et al. v. Geo. N. Page. Note, \$920. Plffs. attys., Cole & Cole.

33071. Chas. T. Carter et al. v. The District of Columbia. Damages, \$6,000. Plffs. atty., A. A. Hoehling, Jr.

33072. Nicholas H. Shea v. The District of Columbia. Damages, \$5,000. Plffs. attys., Shellabarger & Wilson and R. Hagner.

June 18.

33073. Frederick J. Quinby v. Herman Linde. Account, \$621.29. Plffs. attys., Geo. K. French and Howard P. Okie.

33074. Henrietta Richard et al. v. the District of Columbia. Damages, \$3,000. Plffs. attys., Shellabarger & Wilson and R. Hagner.

33075. Jos. T. Bailey et al. v. Richard B. Porter. Judgment of Justice Bundy, \$68.23.

June 20.

33076. Augustus Treadwell et al. v. Samuel H. King. Account, \$237.24. Plffs. attys., H. W. Garnett and D. S. Mackall.

33077. Chas. H. Carrington v. Mitchell Renz et al. Damages, \$522.50. Plffs. attys., S. D. Truitt and W. A. Chapman.

June 22.

33078. Millard F. Halleck et al. v. Silas W. Hastings. Replevin. Plffs. attys., H. W. Garnett and D. S. Mackall.

33079. Hannah Bruce v. Albert A. Ashe. Judgment of Justice Taylor, \$55. Plffs. atty., A. W. Eastlack.

33080. Peter Daily v. Mary W. Shires et al. Trover. Plffs. atty., E. J. B. O'Neil.

33081. Bergrine W. Browning v. the District of Columbia. Damages, \$10,000. Plffs. atty., F. T. Browning.

33082. Rackell Sandman v. the District of Columbia. Damages, \$5,000. Plffs. atty., F. T. Browning.

June 23.

33083. John H. Corning v. Wm. Harper. Account, \$458.98. Plffs. atty., M. F. Morris.

33084. Wm. B. Gray v. Wm. Harper. Note, \$240. Plffs. atty., M. F. Morris.

June 24.

33085. Isaac S. Lyon v. John H. Adriaans. Judgment of Justice Bundy, \$37.50.

33086. Salvatore Desio v. Sophia W. Mechlin. Damages, \$10,000. Plffs. attys., A. A. Lipscomb and H. F. Woodard.

June 25.

33087. Sarah L. Marshall v. Jos. M. Johanniss et al. Account, \$100. Plffs. atty., E. M. Hewlett.

33088. Stephen H. Mills v. Milton W. Johnson et al. Account, \$1,108.75. Plffs. atty., E. H. Thomas.

33089. Jno. H. Walter v. John Linder et al. Ejectment. Plffs. attys., W. Mosby Williams, and John Ridout.

33090. Annie v. Marcey v. Wash. Loan & Trust Co. Account, \$515. Plffs. atty., Woodbury Wheeler.

June 27.

33091. J. H. Johnson v. Howard Warner et al. Ejectment. Plffs. attys., Birney & Birney.

June 28.

33092. Aaron Straus v. Edward P. Goading. Judgment of Justice Bundy, \$80. Plffs. atty., D. S. Mackall.

The manufacture of Blanks logically belongs, and must inevitably remain in the hands of a concern composed of lawyers, and which has the enterprise and capital to equip a perfectly appointed printing office, and engage the best talent to manufacture the same. Made primarily for lawyers. For other people?—perhaps: You can buy them. Office 503 E, n. w.

Legal Notices.

Rule of Court.

RULE 20. * * * * Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

FIRST INSERTION.

This is to Give Notice

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of JAMES THOMSON, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of August, 1892.

CHAPIN BROWN,
323 1/2 St. n. w.,
Washington, D. C.

33 No. 5091. Ad. D. 18.

This is to Give Notice

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of HENRY D. BOTELER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of August, 1892.

CHAPIN BROWN,
323 1/2 St. n. w.,
Washington, D. C.

33 No. 5112. Ad. D. 18.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, Holding a Special Term for Orphans' Court Business.

August 13, 1892.

In the case of Warren I. Collamer, administrator c. t. a. of PHILIP THOMAS, deceased, the administrator aforesaid has, with the approval of the court, appointed Friday, the 16th day of September, A. D. 1892, at 11 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the administrator c. t. a. will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
33 No. 8317. Ad. D. 14.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of JULIA LIESMANN, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of August, 1892.

CHARLES LIESMANN,

38 John A. Barthel, Proctor.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business,**

August 11th, 1892.

In the case of Joseph Packard, Jr., administrator d. b. n. c. t. a. of WALTER JONES, deceased, the administrator aforesaid has, with the approval of the court, appointed Friday, the 9th day of September, A. D. 1892, at 12 o'clock m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the administratrix will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Washington Post previous to the said day.

Test: L. P. WRIGHT.

Register of Wills for the District of Columbia.

38 No. 116. Ad. D. 8.

This is to Give Notice

That the subscriber, of District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of ANNA E. WORMLEY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 11th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 11th day of August, 1892.

W. H. A. WORMLEY,
Park St., Mt. Pleasant.

38 No. 5118. Ad. D. 18. Wm. H. Dennis, Proctor.

SECOND INSERTION.**This is to Give Notice**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of WILLIAM F. STIDHAM, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 5th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 5th day of August, 1892.

A. D. STIDHAM,
1011 T St. N. W.

38 No. 5115. Ad. D. 18. M. P. Andrews, Proctor.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration c. t. a. on the personal estate of ALCINDA M. ROBINSON, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of August, 1892.

G. P. ROBINSON,
Atlantic Bldg.

38 No. 4824. Doc. 17. Gordon & Gordon, Proctors.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business.**

August 8th, 1892.

In the case of Mary Middleton, administratrix of JOHN H. MIDDLETON, deceased, the administratrix aforesaid has, with the approval of the court, appointed Friday, the 16th day of September, A. D. 1892, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the administratrix will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test:

L. P. WRIGHT,
Register of Wills for the District of Columbia.
32 No. 4388. Ad. D. 16. George F. Williams, Proctor.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business,**

August 5, 1892.

In the case of John B. Buckley, administrator of the estate of PATRICK CRONIN, deceased, the administrator aforesaid has with the approval of the court, appointed Friday, the 2d day of September A. D. 1892, at 10 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the said administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test:

L. P. WRIGHT,
Register of Wills for the District of Columbia.
32 No. 4261. Ad. D. 16. Neal T. Murray, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Edward T. Mathews et al., Trustees, } In Equity. No. 13,628.
vs.
Rachel B. Mathews et al.

Edward T. Mathews and John Ridout, trustees, having reported a sale of the west twenty four (24) feet two (2) inches front on E street by depth of forty five (45) feet of original lot three (3) in square numbered four hundred and eighty eight (488) in the city of Washington, District of Columbia, to Samuel K. Behrend, for \$300.00 cash: It is this 9th day of August, 1892, ordered, that said sale will be finally ratified and confirmed on the 9th day of September, 1892, unless cause to the contrary be shown before said day.

Provided a copy of this order be inserted in each of the three successive issues of the Washington Law Reporter published next after the date of this order.

E. F. BINGHAM, C. J.
A true copy. Test: J. R. Young, Clerk,
32 No. 4261. By L. P. Williams, Asst. Clerk.
[Filed August 9, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 11th day of August, 1892.

Charles Gambrall } No. 13,768. Equity Doc. 33.
vs.
Michael Leonard and others.

On motion of the plaintiff, by Messrs. Callaghan & Taylor, his solicitors, it is ordered that the defendants, MICHAEL LEONARD, ANN LEONARD, his wife, and the Unknown Heirs of RICHARD FRENCH, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to enforce plaintiff's claim for \$1,600 against lots 69 and 70 in French's subdivision of lots in square 28 in Washington, D. C., for board, care, maintenance of their ancestor a certain Richard French.

Provided, this order shall be published once a week for three weeks in the Washington Post and in the Washington Law Reporter.

By the Court. CHARLES P. JAMES, Justice, &c.
32 True copy. Test: J. R. Young, Clerk.

Legal Notices.**THIRD INSERTION.****This is to Give Notice**

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court Business, letters testamentary on the personal estate of FELIX M. DRAENEY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day of August, 1892.

THOS. M. DRAENEY,
613 and 645 N. Y. ave. n. w.

31

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Jesse C. Ergood et al. } No. 13,866. Equity.

Ferdinand Bitter et al.

Leon Tobriner and John A. Barthel, the trustees herein, having reported that on Tuesday, the twenty-sixth (26) day of July, A. D. 1892, they sold the property described in the bill herein to Aaron Prag, Harry Prag and Moses Prag at and for the sum of fifty-one hundred dollars (\$5,100.00).

It is this twenty-eighth (28) day of July, A. D. 1892, ordered, that the said sale be ratified and confirmed unless good cause to the contrary be shown on or before the first (1st) day of September, A. D. 1892.

Provided a copy of this order be published in the Washington Law Reporter once in each week for three (3) successive weeks prior to the said first (1st) day of September.

By the Court:

A. B. HAGNER, Justice.

A true copy. Test:

J. R. Young, Clerk.

31

By M. A. Clancy, Asst. Clerk.

[Filed July 28, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term in Equity.

Jackson H. Ralston et al.

v.

Thomas S. Queen et al. } In Equity. No. 12,967.

The report of the trustees, appointed in the above entitled cause, having been read and considered, it is this 30th day of July, A. D. 1892, adjudged and ordered that the sale reported by said trustees, be hereby ratified and confirmed unless cause to the contrary be shown on or before the 5th day of December, A. D. 1892.

Provided a copy of this order be published in the Washington Law Reporter and Evening Star once a week for each of three successive weeks before the 5th day of September aforesaid.

The report shows that the real estate was sold to Thomas L. Cropley for \$11,271.40.

A. B. HAGNER, Asso. Justice.

A true copy. Test:

J. R. Young, Clerk,

31

By M. A. Clancy, Asst. Clerk.

[Filed July 30, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

William Cochrane et al.

vs.

Alice Adelmann et al.

Job Barnard and Benjamin F. Leighton, trustees herein, having reported sales of all real estate described in the bill in this cause, for the aggregate sum of \$37,190.40.

It is this 29th day of July, 1892, ordered, that said sales be ratified and confirmed unless cause to the contrary shall be shown on or before the 6th day of September, 1892.

Provided a copy of this order is published for three successive weeks before that date, in the Washington Law Reporter.

A. B. HAGNER.

A true copy. Test:

J. R. Young, Clerk,

31

By M. A. Clancy, Asst. Clerk.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphan's Court business, letters testamentary on the personal estate of CATHERINE CORRIGAN, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of May, 1892.

TIMOTHY J. GORMAN,

31 James Fullerton, Proctor.

1115 1/2 St. s. w.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,**

Holding a Special Term for Orphans' Court Business.

This 30th day of July, 1892.

In re estate of HARRIET W. SHACKLETT, late of Washington, D. C. No. 5056. Adm'n. Doc. 18.

Application having been made for the probate of a paper-writing propounded as the last will and testament and codicil, and for letters testamentary on the estate of said Harriet W. Shacklett, deceased, by Roberta E. Shacklett.

Notice is hereby given to all concerned to appear in this court on Friday September 2d, 1892, at one o'clock p. m., to show cause, if any exist, against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter and Evening Star once a week in each of three successive weeks before said day.

By the Court.

A. B. HAGNER, Justice.

A true copy. Test: L. P. WRIGHT, Reg. of Wills, D. C.
31 D. W. Glassie, Proctor for applicant.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of JULIUS PACH, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of July, 1892.

PAULINE PACH,

31 Wolf & Cohen, Proctors.

1218 T St. n. w.

This is to Give Notice

That the subscriber, of Omaha, Neb., has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of ELIZABETH SCOTT GURLEY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 29th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of July, 1892.

WILLIAM F. GURLEY,

31 Gordon & Gordon, Proctors. Omaha, Nebraska.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
The 28th day of July, 1892.

Mary M. Farnsworth

vs.

William Farnsworth.

Equity. No. 13,848.

Upon motion of the complainant by her counsel, Albert Sillers, it is this day ordered, that the defendant enter his appearance herein on or before the next rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce *a vinculo matrimonii* on the grounds of desertion for the full and uninterrupted period of five years.

It is further ordered that the above notice be published in the Washington Law Reporter and in the Evening Star for the period of three successive weeks before said rule-day.

A. B. HAGNER, Asso. Justice.

31 A true copy. Test: J. R. Young, Clerk.

[Filed July 28, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding an Equity Court.

William H. Reed, Jr.

vs.

Nettie Reed.

Equity. No. 13,614. Doc. 33.

On motion of Messrs. Cook and Sutherland, solicitors for petitioner, it is July 28th, 1892, ordered, that the defendant, NETTIE REED, appear or cause her appearance to be entered, in the above entitled cause, on or before the first rule day occurring forty days after this date, otherwise the case will be proceeded with as in case of default.

The object of this suit is to obtain a decree of divorce from the bonds of matrimony with the defendant on the ground of cruelty, and matters set forth in the petition of the petitioner.

And this order to be published in the Washington Post as well as the Washington Law Reporter.

A. B. HAGNER, Associate Justice.

31 A true copy. Test: J. R. Young, Clerk.

By M. A. Clancy, Asst. Clerk.

[Filed July 28, 1892. J. R. Young, Clerk.]

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WASHINGTON, D. C., - - - AUGUST 25, 1892

Acts and Joint Resolutions of the 52d Congress, relating to District of Columbia matters, continued from No. 33 of Vol. XX of The Law Reporter.

Joint resolution extending the time in which certain street railroads compelled by act of Congress, approved August sixth, eighteen hundred and ninety, to change their motive power from horse power to mechanical power, for one year.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the time within which the street railroad companies availing themselves of the privileges granted by the act making appropriations to provide for the government of the District of Columbia, and approved August sixth, eighteen hundred and ninety, so far as it extends to the Metropolitan Railroad, is hereby extended for one year from the date of the passage of this act: *Provided*, That so fast as the cars now building are equipped with storage batteries they shall be placed on the road: *And provided further*, That pending the change the present equipment of the road shall be put, kept and maintained in good condition, and any failure to comply with any of the foregoing requirements as to equipment shall render the said Metropolitan Railway Company liable to a fine of not exceeding twenty-five dollars for each day so in default, to be recovered by the Commissioners of the District of Columbia, as other fines are recovered in the District of Columbia.

"SEC. 2. Congress reserves the right to alter, amend or repeal this act."

Approved, July 22, 1892.

Crime in Iceland.

The American Law Review says: "One of the editors of the American Law Review spent his summer vacation in Iceland, and crossed the island twice on horseback and then sailed around it. He spent over a month in the in-

terior of the country, sleeping every night in some farm-house. He had a good opportunity to observe the state of civilization in that far-off and most interesting country. The island had about seventy-three thousand inhabitants at the last census, and there is no reason to believe that it has shrunk below that figure, especially as the three past seasons have been warm, the same as in America. The whole military force of the island consists of two policemen in Reykjavik, the capital. There are but two lawyers in the island not holding public offices. One is what we would call the state's attorney, and the other is on hand to defend any person who may be put on trial for crime. Both are pensioned by the government, else they could not live. Last summer there were but two men undergoing sentence for crime in Iceland, and they were undergoing a term of imprisonment for breaking into a store-house and committing a larceny therein. The young man before spoken of that has murdered his sweetheart will not have the benefit of trial by jury, for there is no trial jury in Iceland. Nor will he be tried in the 'vicinage,' but he will be transported to Copenhagen for trial — all capital cases being tried there. He will thus be literally 'transported beyond seas' for trial, which was one of the grievances for which our fathers went to war with Great Britain and achieved their independence. Copenhagen is nine days' steam from Reykjavik—in other words, it is twice as far from Iceland as Scotland is, and about as far as New York is. The Icelanders are the most honest, generous, hospitable and peace-loving people on the face of the whole earth, and such a people well may be thrown into a state of excitement through the murder of a young girl by her lover."

A BARRISTER once asked Lord Ellenborough in the midst of a boring harangue, "Is it the pleasure of the court that I should proceed with my statement?"

The learned judge replied: "Pleasure Mr. — has been out of the question for a long time, but you may proceed."

AT a trial of a criminal case, the prisoner entered a plea of "not guilty," when one of the jurymen at once stood up. The judge informed him that he could not leave until this case was tried. "Tried!" repeated the juror, in astonishment. "Why, he confesses that he is not guilty."

Law Blanks at the Law Reporter. Printing in the printing office. Come in.

Supreme Court of the District of Columbia.
IN GENERAL TERM.

THE DISTRICT OF COLUMBIA

v.

IGNATIUS NAU.

1. The object of the Legislative Assembly of the District of Columbia in enacting the statute imposing a license on trades, business and professions, practiced or carried on in the District, and providing for the enforcement and collection of fines and penalties for carrying on business in the District without license, approved August 23, 1871, and the amendment of June 20, 1872, was to collect a revenue, and not to impose a penalty for selling intoxicating liquors.
2. It is not especially directed against persons who engage in the traffic in intoxicating liquors, but relates to the issuing of a license to parties in the District who may be engaged in the various trades, etc., and is in no sense a penal act.
3. The information which does not charge that the defendant failed to pay his license tax when due, or before he engaged in selling liquors, is wholly ineffective, in not charging the only condition upon which a prosecution can be maintained under the act.
4. Under Section 4 of the Act of Congress, approved March 3, 1891, (26 Stat., 849), a writ of error is the appropriate remedy for any error committed by the Police Court.

No. 1851. District Appeal Docket. Decided May 16, 1892.
The CHIEF JUSTICE and Justices COX and JAMES
sitting.

Mr. LEON TOBRINER for the petitioner.

Chief Justice BINGHAM delivered the opinion of the Court:

This case comes here upon a writ of error to the Police Court. In the Police Court an information was filed by the special assistant attorney for the District of Columbia, charging the defendant, Ignatius Nau, on the 23d day of April, 1891, on Brightwood Avenue, in the District of Columbia, with engaging in the business of keeping a place where distilled and fermented liquors, wines and cordials were sold in less quantities than one pint at a time to the same purchaser, to wit; a tippling house, bar-room, sample room, without having obtained a license so to do; the said Ignatius Nau being the proprietor of said place and business and not being licensed to keep said place as an apothecary store, contrary to, and in violation of an act of the late Legislative Assembly of the District of Columbia, entitled "An act imposing a license on trades, business and professions, practiced or carried on in the District of Columbia," and providing for the enforcement and collection of fines and penalties for carrying on business in the said District without license, approved August 23, A. D. 1871, and the amendment to the said act approved June 20, A. D. 1872.

It appears that in the Police Court the defendant filed a motion to quash the information on the ground that it did not set forth any distinct offense forbidden by law. This motion was overruled, and thereupon a plea of not guilty was entered, a jury empanelled, trial had and a verdict of guilty returned by the jury. Thereupon the defendant filed a motion for a new trial and a motion in arrest of judgment, which motions were overruled, and a bill of exceptions taken to the various rulings of the court, signed by the judge and application made for a writ of error to a justice of this court, which was allowed, and the case has been sent up upon the record certified by the Police Court Judge. This information in distinct terms professes to charge an offense under a certain act which is distinctly set forth by its title, and the date of its passage. That act of the Legislative Assembly is in part as follows: By the first section it is provided: "That no person shall be engaged in any trade, business or profession hereinafter mentioned until he shall have obtained a license therefor, as hereinafter provided." The second section provides: "Every person engaged in any trade, occupation or profession, for which a license tax is imposed by the laws of the District of Columbia, shall, at the time for procuring the same, make application to the register, and shall state under oath or affirmation such facts as may be applicable to licenses as apothecaries, commercial agents, bankers, banks, bar-rooms, sample-rooms, and tippling-houses; billiard, bagatelle and Jenny Lind tables; bowling alleys, brokers, dealers in merchandise; distilled and fermented liquors, wines and cordials; hacks, carriages, cabs, omnibuses and street cars; hotels, fire and life insurance companies; livery stables, manufacturers, peddlers, resident or otherwise." The remainder of this section provides for the mode of applying for a license and the issuing of the same.

Section 4 of the original act provides: "That every person liable for license tax, who, failing to pay the same within thirty days after the same has become due and payable, for such neglect shall, in addition to the license tax imposed, pay a fine or penalty of not less than five nor more than fifty dollars, and a like fine or penalty for every subsequent offense."

Section 5 provides that, "the proprietors of bar-rooms, sample-rooms and tippling houses shall pay one hundred dollars annually. Every place except an apothecary store, where distilled or fermented liquors, wines or cordials, are sold, in less quantities than one pint at a time

to the same purchaser, shall be regarded as a bar-room, sample-room, or tippling house."

Section 10 provides: "That every place where distilled or fermented liquors are sold in less quantities than one pint, to be drank on the premises, shall, unless kept by apothecaries, be known as a bar-room, sample-room, or tippling house, as the case may be; and it shall be the duty of the proprietor of every such place to present with his application for license the written permission of a majority of the owners of real estate," etc.

On June 20, 1872, section 4, relating to the payment of a license tax was amended so as to read as follows: "That every person liable for license tax, who may fail to pay the same before engaging in the business for which the license may be required shall, in addition to the license tax imposed, pay a fine or penalty of not less than five nor more than fifty dollars for each offense to be imposed and collected as provided in this act. Commercial agents, managers of theatrical performances, exhibitions and concerts for gain (not including exhibitions and concerts given by or for the benefit of religious or charitable institutions or societies) beer gardens, circuses, gift enterprises and race courses, one half to the use of the informer."

It will be observed that the information has in it no averment of a failure on the part of the defendant to comply with the provisions of Sec. 4, as originally enacted, or as amended in 1872. There is no charge in this information that the defendant failed to pay the license tax within thirty days after the same had become due and payable, nor is there any charge that the defendant being liable for the license tax failed to pay the same before engaging in the business of keeping a bar-room.

It is claimed on the part of counsel for defendant that the latter clause before stated as being in the Act of 1872, amending the fourth section of the original act, providing for and enforcing the penalty, and also providing for the collection of the tax furnishes the only ground contained in the act for a prosecution for non-compliance with its provisions, and that the charge made in the information is in relation to matters, so far as this prosecution is concerned, entirely inconsequential. It alleges that the party was engaged in the keeping of a tippling house, in proper terms enough under the act, but nowhere is it alleged that there was a failure to pay the tax. It may be that notwithstanding the defendant had not received his license he may have paid his tax, and it is the failure to pay the tax that is made the subject of prosecution by this act.

It is answered by counsel for the District that this is an objection that cannot be made after verdict, and it is further claimed that the defect in the information cannot be made available to the defendant by a writ of error taken under the Act of 1891, and that the defendant should have selected certiorari as the remedy to challenge the jurisdiction of the Police Court. It is evident that the object in enacting this statute by the Legislative Assembly was to collect a revenue, and not to enact a penal statute for selling intoxicating liquors, nor is it especially directed toward persons who engage in the traffic in intoxicating liquors. It relates to the issuing of a license to parties in the District who may be engaged in the various trades, occupations and professions, and is in no sense a penal act. If a party fails to pay his license tax when due, or engages in business without paying it, he may be compelled to pay not only the tax but a penalty. The information does not charge that the defendant failed to pay his license tax when due or before he engaged in selling liquors. The information must be regarded then as wholly ineffective, in not charging the only condition upon which a prosecution may be predicated under this act. The Act of Congress (26 Stat., 849) especially provides for taking exceptions to the rulings of the Police Court upon questions of law and to instructions to the jury; for the taking of bills of exceptions, and for the allowance of a writ of error by a justice of this court, and for the disposition of the same in this court; and provision is further made that except as the final judgment of the Police Court shall be affected by this proceeding in error, the judgment of the Police Court shall be final, thereby excluding every other remedy, either by appeal or certiorari, for any error committed by the Police Court. We apprehend that there can be no doubt that a writ of error is the appropriate remedy, as Congress has plenary power in the premises.

The judgment of the Police Court is reversed and the defendant discharged.

California Constitution.

The *Indian Jurist*, of Madras, India, June 30, 1892, says:

There are some curiosities in the constitution of the State of California. It directs that a judge shall not draw his salary unless he makes an affidavit that there is no case more than ninety days old on his file. If such a law were passed in India it would be necessary to limit the duration of speeches of counsel, but even then

it is difficult to say what a judge could do if he had cases such as the Kistna suit with 270 witnesses, which we mentioned last November, or the Pittapur suit, for which we hear Mr. Ross has set apart two clear months in the Rajahmundry Court. Imagination fails to portray the results of applying this rule to the High Court and forbidding Sir Arthur Collins to draw his rupees 5,000 until the file was reduced to three months' pendency.

Another gem of the California constitution is the following sentence. "Asiatic coolieism is a form of human slavery, and is forever prohibited in this State, and all contracts for coolie labor shall be void." Coolieism is a good word. We had not before met with it. The following sentence deals with what we call defamation. "In all criminal prosecutions for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libellous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact." This is very refreshing. The layman who drafted that sentence knew what he wanted, and was not going to be kept out of it by any lawyers.

Circuit Court of Appeals, Fifth Circuit.

SOUTHWESTERN TELEGRAPH & TELEPHONE CO.

v.

ROBINSON.

TELEPHONE COMPANIES — Negligence — Suspended Wire-Electrical Storm.—A telephone company which for several weeks permits its wire to remain suspended across a public highway, a few feet from the ground, is liable to a traveler who comes in contact therewith during an electrical storm, and is injured by a discharge of electricity which has been attracted from the atmosphere, since the electricity would have been harmless except for the wire.

Decided May 30, 1892.

IN Error to the Circuit Court of the United States for the Northern District of Texas.

At Law. Action by J. B. Robinson against the Southwestern Telegraph & Telephone Company for personal injuries. Verdict and judgment for plaintiff. Defendant brings error. Affirmed.

Statement by BRUCE, District Judge.

Plaintiff in error was sued by defendant in error in the district court of Cook County, Tex., for damages in the sum of \$12,000. He states his cause of action as follows:

"Your petitioner, J. B. Robinson, a resident of Cooke County, Tex., complaining of the

Southwestern Telegraph & Telephone Company, a private corporation incorporated under the laws of the State of New York, but doing business in the State of Texas, and having a legal office in Gainsville, Tex., respectfully represents that on or about the 29th day of October, A. D. 1889, the defendant owned and operated a telephone line between the cities of Gainsville and Dallas, Tex., and intermediate points, the connection between said cities being made by a single wire suspended by means of poles in the manner of telegraph wires, usually about thirty feet from the ground; that its said telephone line or wire crossed the public highway, between Dallas and McKinney, known as the 'Dallas and McKinney road,' about five miles south of Plano, in Dallas County; that at said points and over said road on the aforesaid date, and for several weeks prior thereto, the defendant negligently suffered and permitted its aforesaid wires to be and remain suspended over said road within a few feet of the ground, and within such proximity thereto that travelers on the said road unavoidably and necessarily came in contact therewith; that the said wire so suspended over said road, which was a public highway between two large cities, and daily travelled by many people in vehicles and on horseback, all of which was known to the defendant, was a dangerous and unlawful obstruction of said road, and a public nuisance, and that the defendant on the aforesaid date, and long prior thereto, knew of the condition of said wire at said point, or might have known it by the exercise of reasonable care, but nevertheless negligently permitted it to remain in the condition aforesaid, that the said wires are the best known conductors of electricity, and are the only vehicles in general use for the transmission of electric currents, and during electric or thunder storms, such wires ordinarily become heavily charged with electricity, of power sufficient to inflict death or do great injury to those coming in contact with them, and that from this fact arises the peculiar danger of allowing such wires to remain suspended so low that people will come in contact with them,—all of which was on the aforesaid date and long prior thereto well known to the defendant, or might have been known to it by the exercise of ordinary care; that on the afternoon of the aforesaid date, as plaintiff was travelling on horseback on the said Dallas and McKinney highway during the prevalence of a heavy thunder storm, such, however, as is usual in that section at that season of the year, he came in contact with the defendant's said

wire at the point aforesaid, in consequence of its being suspended so near the ground; that it was a dark, stormy evening, and that the wire was invisible to plaintiff, and plaintiff came in contact with it through no fault or negligence on his part, but through the gross negligence and carelessness of the defendant, as aforesaid, in leaving said wire suspended over a public highway within a few feet of the ground; that at the time said wire was heavily charged with electricity generated by the storm then prevailing, as aforesaid, and on coming in contact with it, plaintiff received a full charge of the fluid, which knocked him from his horse and completely paralyzed him for the time being, depriving him of the power of speech and locomotion; that plaintiff lay in the road where he had been thrown, in the rain and storm, until picked up by a passerby, and carried to a neighboring house, and there plaintiff was confined to his bed for more than five weeks, suffering during this period severe bodily pain and mental anguish. Plaintiff represents that he is but little past middle age, and before said injuries was of a vigorous mind and robust constitution, and capable of great endurance, physical and mental activity, but that, in consequence of said injuries, his health and mental faculties have been permanently and seriously impaired, and his capacity to pursue his usual avocation practically destroyed, to his actual damages ten thousand dollars. Plaintiff further represents that, on account of said injuries, he has been put to great expense for medical attention, and that his condition is such as to require, for the future, constant medical treatment and the care of his family, who are thus withdrawn from their customary duties, to his actual damages two thousand dollars. Wherefore plaintiff sues, and prays that the defendant be cited to answer herein, and that on final hearing he have judgment for his said damages, costs, and for further general and special relief."

The case was removed into the Circuit Court of the United States for the northern district of Texas, and the defendant answered as follows:

"Now comes defendant, and for answer by way of demurrer to plaintiff's cause of action says, first, that the plaintiff ought not to have and maintain this cause, for that his original petition does not state facts sufficient to constitute a cognizable and enforceable demand before the law. Of this he prays the judgment of the court. And for further answer, if such be necessary, defendant says it denies each and singular the allegations in the plaintiff's pe-

tition contained, and says it is not guilty of the wrongs, injuries, and negligent conduct charged; and of this it puts itself upon the country. And, answering further, it says if plaintiff was injured in any manner, it was the result of his negligence,—that he failed to exercise that reasonable degree of care, in traveling at the dangerous time in which he alleges he was traveling, and in avoiding contact with defendant's line during a thunder storm, that a reasonably prudent man ought to have exercised under like circumstances. Wherefore defendant says plaintiff ought not to recover, and of this it puts itself upon the country."

The case was heard, and the demurrer was overruled, to which ruling the defendant excepted, and the trial before court and jury resulted in a verdict for plaintiff in the sum of \$2,500, for which amount, with interest and costs, judgment was afterwards rendered. Motion for new trial was filed, heard, and overruled by the court. The assignment of error is that in the record of the proceedings of the above cause in the trial court there is manifest error, in this to wit:

"The court erred in overruling the general demurrer of the said Southwestern Telegraph & Telephone Company to the original petition and cause of action of the said J. B. Robinson, as will appear from an inspection of the said petition, demurrer, and judgment of the court thereon."

Mr. Justice BRUCE after stating the facts, delivered the opinion of the Court.

The question and the only question for review here is whether the plaintiff stated a cause of action in his petition, and if the demurrer to the cause of action, as stated by the plaintiff in the court below, was properly overruled. In Railroad Co. v. Jones, 95 U. S., 439, it is said negligence is the failure to do what a reasonable and prudent person would ordinarily have done, under the circumstances of the situation or doing what such a person, under the existing circumstances, would not have done. It would seem too plain to require argument that the allegations of the petition show negligence on the part of the telephone company. Under the facts and circumstances stated the wire was an obstruction upon the public highway. Travelers were liable to collide with it, and injurious consequences to them would follow as the natural and probable result of such contact. Article 622 of the Revised Civil Statutes of Texas provides:

"Corporations created for the purpose of constructing and maintaining magnetic tele-

graph lines are authorized to set their poles, piers, abutments, wires and other fixtures along, upon, and across any of the public roads, streets, and waters of the State, in such manner as not to incommodate the public in the use of such roads, streets, or waters."

The duty on the part of the telephone company was clear to prevent its wire from becoming an obstruction on the highway. Under the circumstances shown, the defendant in error might have been hurt by coming in contact with the wire of the telephone company, and injuries to the defendant in error might have resulted, independent of the fact that the wire at the time was loaded with a charge of electric fluid from the clouds and storm then prevailing. So that it is difficult to see how this verdict could be disturbed even if the contention of the plaintiff in error is correct, that the electricity with which the wire was charged at the time was the proximate and immediate cause of injury to the defendant in error, for which the telephone company cannot be held responsible. Negligence is a mixed question of law and fact, and is a question for the jury, under proper instructions from the court. It is not claimed here that the court misdirected the jury in its charge on the law of the case, and the verdict is: "We, the jury, find for the plaintiff in the sum of twenty-five hundred dollars." The jury found negligence on the part of the telephone company, resulting in injuries to the defendant in error, and for which they assess his damages at \$2,500. It is not shown that the jury found that the wire of the telephone company was charged with electricity at the time the defendant in error came in contact with it, and that the electric fluid was the cause of the injury to the defendant in error, and so it is not clear that there was any error in the ruling of the court, even upon the theory of the case insisted upon by the plaintiff in error. No point is made on the question of contributory negligence, and the contention of the plaintiff in error seems to be that the petition states the cause of action to have been the injuries which resulted from the fact that the wire at the time of the contact with it by the defendant was charged with electric fluid, for the creation and existence of which the telephone company was in no sense responsible. Persons, however, must be held to know the ordinary operation of the forces of nature, and to use proper means to avert danger. If the electric fluid with which the wire of the telephone company was charged at the time was an element or the main element in the production of

the injuries to the defendant in error, still it is clear that the displaced wire furnished the means of the communication of the dangerous force which resulted in the injury to the defendant in error. Science and common experience show that wires suspended in the atmosphere attract electricity in the time of storms, and when so suspended and insulated are dangerous to persons who may at such times be brought in contact with them, and the petition charges that, during electric or thunder storms, such wires ordinarily become heavily charged with electricity, of power sufficient to cause death or great injury to those coming in contact with them; and whether this is so or not is a question of fact. To say that the agency of the telephone wire in the production of the injury was inferior to that of the electric current, which was the main cause, is not satisfactory. It is, in fact, to admit that the company's displaced wire furnished the means by which the dangerous force was communicated to and injured the defendant in error. True, it was a new force of power which intervened, with the production of which the telephone company had nothing to do, but upon this point, in *Insurance Co. v. Tweed*, 7 Wall., 52, the court say:

"If a new force or power has intervened, of itself sufficient to stand as the cause of the misfortune, the other must be considered as too remote."

The new force or power here would have been harmless but for the displaced wire and the fact that the wire took on a new force, for the creation of which the company was not responsible, yet it contributed no less directly to the injury on that account. In *Gleeson v. RR. Co.*, 140 U. S., 435, 11 Sup. Ct. Rep., 859, the court held that a landslide in a railway cut caused by an ordinary fall of rain is not an act of God, which will exempt the railway company from liability to passengers for injuries caused thereby while being carried on the railway; and on page 441 (page 861, 11 Sup. Ct. Rep.) of the opinion in that case the court, quoting from an English case, say "that the plaintiff was entitled to a verdict on the ground that, if a person maintains a lamp projecting over a highway for his own purposes, it is his duty to maintain it so as not to be dangerous to persons passing by; and if it causes injuries, owing to a want of repair, it is no answer on his part that he had employed a competent man to repair it," citing 1 Thomp. Neg., 346, 347. No case is cited like the one at bar, but the principles upon which cases of this character have been decided sustain the verdict in this case, and the judgment of the court is affirmed.

Supreme Court of California.
IN BANK.

PEOPLE v. SMITH.
Decided February 23, 1892.

APPEAL from the Supreme Court of San Francisco County.

Mr. Justice GAROUTTE delivered the opinion of the Court:

This is an action by the people on the relation of R. D. Chandler to abate a nuisance.

It is alleged in the complaint that the land upon which the building stands is part of a public street in the city of San Francisco, known as Oregon street; that defendant placed the structure in said street on or about July 1, 1885, and ever since has unlawfully kept and maintained the same. The defendant denied that the land on which the building stands ever became a public street by dedication or otherwise; averred that he was the owner in fee of the premises described, and entitled to the use and enjoyment of the same; and for a further answer alleged that for more than seventeen years immediately prior to August 18, 1877, he had been in the actual, open, peaceable and exclusive possession of the property; that on said last named day the city and county of San Francisco, falsely pretending that the premises were included within the limits of the public street called Oregon street, wrongfully entered upon the premises and ousted him therefrom; that thereafter he commenced an action against said city and county to recover the possession of the premises; that in the answer filed therein the defendant claimed that the premises in controversy had been dedicated to public use as a street; that on May 14, 1880, a judgment was entered in said action in favor of the plaintiff herein, and against the city and county for the possession of the land; that the court adjudged therein that neither the State of California nor the city and county of San Francisco dedicated the premises to public use; that an appeal was taken from the order of the court refusing to grant a new trial, but said appeal was dismissed on May 22, 1885, and the judgment thereupon became final; that on June 14, 1885, this defendant was placed in possession of the premises by the sheriff, and has ever since remained in possession, and erected a valuable building thereon. For further answer the defendant alleged that he was in actual, open, exclusive and notorious possession of the premises, claiming in good faith to own the same for many years before any action was taken by

the city and county of San Francisco, or the State of California, in the matter of laying out, opening or dedicating the land in controversy as a public street.

At the trial, among other matters, the defendant introduced in evidence the judgment-roll in the action of Smith v. The City and County of San Francisco, commenced September 12, 1877, and the writ of restitution under which the defendant was placed in possession, as alleged in his answer.

As one of its findings of fact the court found that the allegations of the defendant's answer, as to the matters therein set forth with reference to the action brought by Smith (the defendant here) against the city and county of San Francisco, were true, but held that the people of the State were not a party to said action, and that consequently the judgment therein rendered was no bar to this action, and thereupon ordered judgment for plaintiff. This identical question was involved in the recent case of the People v. Holladay, No. 13,676, filed February 4, 1892, and there decided contrary to the views held by the trial court in this case. The judgment being a complete bar to the cause of action, it becomes unnecessary to examine other assignments relied upon.

Upon the authority of People v. Holladay, *supra*, the judgment and order are reversed and the cause remanded with directions to enter judgment for the defendant.

Mr. Justice Harrison, being disqualified, did not participate in the foregoing opinion.

MUTUAL BENEFIT INSURANCE.—Acts 1888, Ch. 429, authorizing the incorporation of "fraternal beneficiary organizations," provides that "any corporation duly organized as aforesaid which does not employ paid agents" in soliciting business, "and which conducts its business as a fraternal society on the lodge system," may pay a benefit to the member or his family: Held, that where a corporation, organized under such act, provided for the payment of a benefit to members at the end of a year out of a fund created by assessments levied for that purpose, but employed paid agents to solicit business, members to whom such benefit certificates had been issued might refuse to pay further assessments without forfeiting payments already made, and were entitled to have the fund so accumulated distributed among the certificate holders.—*Fogg v. Supreme Lodge of the Order of the Golden Lion, Mass.*, 31 N. E. Rep., 289.

Supreme Court of Appeals of Virginia.

ROBINSON v. COMMONWEALTH.

1. **HOMICIDE**—Indictment.—The caption, though no part of an indictment, is a part of the record on appeal, and may be looked to, in ascertaining whether the inferior court has jurisdiction. It is therefore immaterial that an indictment, found at a special grand jury term, fails to show on its face that it was found by a special grand jury, when that fact appears in the caption.
2. **RECORD ON APPEAL**—Special Grand Jury.—Where the record does not affirmatively show that an order of the court to summon a grand jury was made, the Supreme Court will presume that such order was made.
3. **NECESSITY FOR VENIRE FACIAS**.—An objection that the grand jury were summoned from a list furnished by the judge without a *venire facias*, when not raised until after verdict, is waived.
4. **PETIT JURY**.—Since Code, Sec. 3978, providing that a special grand jury may, at any time, be “summoned from a list furnished by the judge,” is silent as to whether a *venire facias* shall issue, such jury may be summoned without such process.
5. **COMPLETION FROM BY-STANDERS**.—Under Code, Sec. 4019, which provides that, in any case of felony, where a sufficient number of jurors to constitute a panel of sixteen, free from exception, cannot be had from those summoned “the court may direct another *venire facias* and cause to be summoned from the by-standers or from a list to be furnished by the court,” so many persons as may be necessary; by-standers may be summoned to complete the panel without a list furnished by the court.

Decided March 17, 1892.

ERROR to Corporation Court of Lynchburg.
Mr. Justice LEWIS delivered the opinion of the Court:

The prisoner was indicted by a special grand jury at the September term, 1891, of the Corporation Court of Lynchburg, for the murder of Mollie Davis.

The September term, as the record shows, is not a regular grand jury term of that court. Accordingly, on his arraignment, the prisoner moved to quash the indictment on three grounds, viz: (1) That the indictment ought to show on its face that it was found by a special grand jury; (2) that it ought likewise to show that the grand jury had been summoned in pursuance of an order of the court; and (3) that this order ought to appear affirmatively by the record to have been made.

It does not, in fact, appear affirmatively that such order was made, nor does the indictment show on its face that it was found by a special grand jury. It is therefore insisted that the indictment lacks the essential requisite of showing that the Corporation Court had jurisdiction. But this position is untenable. The record, as certified to this court, commences as follows: “Virginia. Pleas before the Honorable J. Singleton Diggs, judge of the Corporation Court for the city of Lynchburg, held at the

court-house thereof on Friday, the 9th day of October, 1891. Be it remembered that heretofore—to-wit, at a Corporation Court for the said city, at the court-house thereof, on Monday, the 7th day of September, 1891, James W. Watts, foreman, E. S. Hutter, J. L. Beck, W. F. Matthews, I. F. McKinney, Marcus Bull, N. N. Needham, John S. Nickolas, R. H. Glass, Jr., and W. A. Heffeman were sworn a special grand jury of inquest in and for the body of this city, and, having received their charge, retired, and after some time returned into court, and presented an indictment against William Robinson for murder, a ‘true bill,’ which said indictment is in the following words and figures, to-wit.” Then follows the indictment, which commences as follows: “State of Virginia. In the Corporation Court of the city of Lynchburg, to-wit: The jurors of the Commonwealth of Virginia, in and for the body of the city of Lynchburg, and now attending the Corporation Court for the said city, upon their oaths present,” etc.

It is contended for the prisoner that what precedes the indictment in the transcript is merely the caption of the indictment, and that the caption is no part of the indictment. It is true that the caption is no part of the indictment, nor, strictly speaking, is there any such thing as a caption to an indictment in the court in which it was found. It is not until the indictment is transmitted from that court to a higher court that the caption appears. “When the indictment is returned from an inferior court, in obedience to a writ of *certiorari*,” says Chitty, “the statement of the previous proceedings sent with it is termed the ‘Schedule,’ and from this instrument the caption is extracted. When thus taken from the schedule, it is entered upon the record, and prefixed to the indictment, of which, however, it forms no part, but is only the preamble, which makes the whole more full and explicit. In cases of removal by *certiorari*, its principal object is to show that the inferior court had jurisdiction, and therefore a certainty in that respect ‘is particularly requisite.’” 1 Chit. Crim. Law, 327. See also Starkie, Crim. Pl., 258; *Ex parte Bain*, 121 U. S., 1. Hence the caption is a part of the record, though no part of the indictment, and may be looked to in order to ascertain whether the inferior court had jurisdiction. 1 Bish. Crim. Proc., 3d Ed., Sec. 661; *State v. Brickell*, 1 Hawks, 354. There is no warrant for holding that in a case like the present the indictment must show on its face that it was found by a special grand jury, duly summoned.

The record—that is, the caption—as we have seen, shows in this case that the indictment was found by a special grand jury, and that is sufficient.

It is true the record does not affirmatively show that an order to summon a grand jury was made, but, in the silence of the record, we must presume that such an order was made. The order itself is not a necessary part of the record of the case, since the commencement of the case was the finding of the indictment, and that was necessarily subsequent to the making of the order. The motion to quash was therefore rightly overruled.

The next point arises upon the prisoner's third bill of exceptions, from which it appears that the grand jury was summoned by the sergeant from a list furnished by the judge without a *venire facias*. The objection, however, was not made until after verdict, and therefore came too late, as the court below held. Besides, the objection is without merit, independently of this consideration. Section 3978 of the code provides that a special grand jury may be ordered at any time, either by the court in term time, or by the judge in vacation, nor is there any express provision that the order shall be entered of record, though, if made by the court, it would, according to the usual practice, be entered of record. But there is no requirement that a *venire* shall issue to summon a special grand jury, as in the case of a regular grand jury. As to the former, the provision of the statute simply is that the jurors shall be "summoned from a list furnished by the judge," and the courts have no authority to superadd to the requirements of the statute. Until a comparatively recent period, in Virginia no process of any kind was required for the summoning of a grand jury, (Curtis' Case, 87 Va., 589,) and had it been the intention of the Legislature to require a *venire* to issue as well for a special grand jury as for a regular one, the intention would no doubt have been plainly expressed.

But if this were otherwise, it would have been simply an irregularity to summon the grand jury, as was done in the present case, which would have been cured by the verdict, in the absence of any evidence that the prisoner had been prejudiced by the irregularity. Acts 1887-1888, p. 18; Vawter's Case, 89 Va., 245. Nor is there anything in Watson's Case, 87 Va., 608, which decides that a *venire* is an indispensable process to authorize the summoning of a special grand jury, or that such process is required in such a case.

The next ground of objection is that additional persons were summoned in order to complete the panel from which to form the petit jury, who were taken from the by-standers without a list furnished by the court. There was no error in this. Code, Sec. 4019; Waller v. Commonwealth, 84 Va., 492. This disposes of all the assignments of error, and the result is that the judgment of the lower court, sentencing the prisoner to be hanged, must be affirmed.

Judgment affirmed.

Supreme Court of Minnesota.

STEEG v. ST. PAUL CITY RWY. CO. STREET CARS—OPPORTUNITY TO ALIGHT— NEGLIGENCE.

The servants of a street car company who control the movements of its cars are bound to use due care in starting the same so as to allow passengers a reasonable opportunity to get safely on board, regard being had to the circumstances of each case.

Decided June 10, 1892.

Mr. Justice VANDERBURGH delivered the opinion of the Court:

This action is for damages for the alleged negligent management of a street car by reason of which plaintiff claims to have suffered personal injuries. The accident occurred while the plaintiff was in the act of getting on, or just after he had got on to the car, and before he had taken his seat, and he claims that he was thrown off, or caused to slip off the car, by a sudden and premature movement of the car caused by the carelessness of defendant's servants in charge of it. The accident occurred on the Selby avenue cable line in the city of St. Paul, and on the "grip car," with which was connected a passenger coach or "trailer." The grip car in question was provided with a step or foot board running lengthwise of the car, by means of which passengers could reach the platform at each end of the car or the seats between. On this occasion the plaintiff attempted to reach the platform upon the front end of the car, so as to take an empty seat there. The plaintiff's hands were both incumbered with packages, and his testimony shows that as soon as he stepped upon the foot board the car started, and, feeling his footing insecure, he hastily laid down the packages on the platform, and caught hold of the front post of the grip car, when, through a sudden jerk of the car, he lost his balance, and slipped off, and was dragged a short distance along the side of the

car, whereby he received the injuries complained of. The plaintiff testifies that he did not have an opportunity to reach the platform before the car started, and he was unable to save himself from falling off. He is substantiated in the main by other witnesses; but witnesses on the part of the defendant, who observed the accident, testify to a different state of facts, and their evidence is in sharp conflict with that of plaintiff, and tended to prove that the plaintiff had actually reached the platform, and after the car was in motion, of his own accord, stepped down upon the foot board to arrange his tools, and while so doing slipped and fell off. The question whether the car was started up before the plaintiff had time to get safely on board the car was then one for the jury. It appears that the conductor and the "gripman" who had control of the movements of the train observed the plaintiff before and while he was getting on, and knew the circumstances attending his attempt to board the car, and the fact that his hands were full. The question whether they exercised due care in starting and handling the cars to assure his safety was one for the jury. This disposes of the first and most important assignment of error.

The counsel for defendant asked the court to charge the jury that passengers riding on the platforms or steps of a street car assume the additional risk of any accident therefrom. There was no prejudicial error in the court's refusal to give the instruction as asked, because the court had already clearly charged the jury on the subject, and the instruction given was specially pertinent to the evidence presented to the jury. The instruction also asked, that the sudden movement or "jerk" of a street car in starting was not negligence, if it necessarily resulted from the appliance of the grip, had no basis in the evidence, as there was no evidence tending to show that it was necessary or usual, and defendants denied that it in fact took place in this instance.

The court also instructed the jury that "the train men were bound to allow plaintiff a reasonable time to get safely upon the car, and, the plaintiff having packages in his hands, they were bound to conduct themselves in starting the train in reference to that fact. These trains are not, of course, ordinarily expected to make long stops. But if anything is apparent in the condition of the passenger, so that he would be likely to be thrown or injured by a motion of the car, then proper regard for his safety might require a train to be held in posi-

tion to avoid it. Care and negligence, in any case, depend upon the circumstances of the particular case. The care, both by the plaintiff and defendant, must depend largely upon the circumstances." There was no error in the instruction as given. The defendant, as a common carrier, was legally obliged to exercise extreme diligence and care, and was bound to allow the plaintiff a reasonable time and opportunity to get safely on board, and it was negligence to start the train sooner. The fact that his movements were somewhat encumbered by packages in his hands might reasonably require more delay and care in starting the train in order to assure his safety, as in the case of aged or infirm persons. 2 Shear. & R. Neg., Sec. 508. No further questions in the case require to be noticed.

Order affirmed.

THERE is a story told in the *Youth's Companion* of a former prominent judge of Massachusetts, now living, who had taken a train in Boston to return to his home in Quincy. He discovered after he had started that the train did not stop at his station. Accordingly, as the cars were approaching Quincy he pulled the bell cord and the train came to a stand. The conductor rushed into the car.

"Who pulled that rope?"

"I did," replied the judge.

"What for?"

"Because I wanted to get off."

The conductor thereupon made some remarks to the judge more forcible and less respectful than he was accustomed to hear. Judge B. thereupon complained to the president of the road, who told him he would inquire into the matter.

When next they met, the judge asked the president if he had reprimanded the conductor for his insolence.

"I spoke to him," he replied.

"Well, what did he say?"

"He said he would come some day and adjourn your court!"

The judge appreciated the man's way of saying that he had the right to control his own train and did not pursue the matter further.—*Ex.*

CAN a person own the air? Apparently yes—at least so it appears from a very curious case which recently arose in England on the maxim that the owner of land owns it *usque ad cælum*. The facts were these: A owned a public house in fee, and B. an adjoining timber yard. A loft, which formed part of B's premises, pro-

jected over A's land. Both the properties had belonged formerly to X, who, in 1870, leased the timber yard to B for twenty-one years. In 1872 X conveyed the public house to A, no reference being made to the overhanging loft, and, shortly afterwards, conveyed the timber yard to Z, who conveyed it, in 1875, to B. B began to heighten the loft, and A asked an injunction on the ground that it, or at least the column of air over it, belonged to him. To this latter proposition the court assented, and decided that A was the owner of the space above the loft, and enjoined B from raising it. The name of this remarkable case was Layburn v. Gridley, L. J., 55; S. J., 363; L. T., 390.—*Irish Law Times*.

THE Circuit Court of Appeals, sitting at Philadelphia, has lately affirmed an important decision rendered by Judge Wales, of the United States Circuit Court, in the case of Postal Telegraph Co. v. Delaware, etc., Telegraph Co., involving the right of a telephone company to refuse its service to a telegraph company, upon the ground that the first mentioned company occupied the position of a licensee and was forbidden by the terms of the license to supply telephones to any telegraph company to be used for telephone purposes. The lower court awarded a mandamus compelling the defendant company to place a telephone in the office of the plaintiff company. Judge Wales took the ground that the defendant company was a common carrier which had offered to the public the use of a telephonic system for the rapid conveyance of oral messages from one point to another; that one of the most important duties of a common carrier is that it shall serve all persons alike, impartially and without unreasonable discrimination, and that the performance of this duty could not be avoided by a special contract made between the respondent or its licensor and one or more persons for the exclusive use of the system, such contract being void as against public policy, and that a patented device or devices, when employed for a public use by a common carrier in the prosecution of its business, would be subjected to the same rules and regulations which govern unpatented property under the same circumstances.

The Court of Appeals, in affirming the case, also holds that it is no longer open to question that telephone and telegraph companies are subject to the rules governing common carriers and others engaged in public employment. While such companies, the court said, are not required to extend their facilities beyond such

reasonable limits as they may prescribe for themselves, they cannot discriminate between individuals of classes which they undertake to serve. If the respondent had confined the use of its telephonic facilities to the carriage of personal messages for individuals, excluding those of telegraph companies and others who forward messages for hire, the relator would probably have no ground for complaint. It did not, however, so limit its business, but carried telegraphic messages as well as others.—*Central Law Journal*.

NO HURRY.—Judge Wakefield, of Waco, Texas, has a son of whom the judge is very proud. He thinks the boy has a judicial mind, and will grow up to be a great jurist. The boy is, however, very lazy. A few days ago the judge said :

"My dear boy, why don't you study more industriously? I want you to become a great jurist. You have not touched your books to-day."

"I'm not going to study any to-day," replied the indolent youth. "I don't see that it makes much difference, pa, whether I become a famous jurist a few days sooner or later."—*Texas Siftings*.

Supreme Court of California.

DEPARTMENT ONE.

DEHAIR v. MORFORD.

Filed August 2, 1892.

APPEAL from the Superior Court of Los Angeles County.

Mr. Justice HARRISON delivered the opinion of the Court:

The city of Los Angeles adopted an ordinance July 8, 1889, for the widening of First street from the west side of Los Angeles street to the west line of Alameda street, for which certain lands were to be taken, and the costs, damages and expenses thereof to be paid by an assessment upon other lands to be benefited thereby. Further proceedings were had under the ordinance, culminating in an assessment upon certain lands bordering upon the improvement, which was placed in the hands of the defendant Morford, as street superintendent of the city, for collection; and the defendant having advertised for sale, and being about to sell for the purpose of satisfying said assessment certain lots of land belonging to the plaintiffs, this action was brought to restrain him from making the sale. The defendants answered the com

plaint, setting out the proceedings leading up to the assessment, and the proceedings thereunder; and upon the motion of the plaintiffs the court rendered judgment in their favor upon the pleadings, perpetually enjoining the defendants from making said sale. From this judgment the defendants have appealed.

Section 2 of the act of March 6, 1889, (Stat. of 1889, p. 70), under which the proceedings for widening the street were had, declares:

"Sec. 2. Before ordering any work to be done, or improvement made, which is authorized by Sec. 1 of this act, the city council shall pass a resolution declaring its intention to do so, describing the work or improvement, and the land deemed necessary to be taken therefor, and specifying the exterior boundaries of the district of lands to be affected or benefited by said work or improvement, and to be assessed to pay the damages, costs and expenses thereof."

The ordinance adopted by the city of Los Angeles for widening said street provides for an assessment to pay the cost of the improvement, in the following language:

"Sec. 2. That the exterior boundaries of the district of land to be benefited by said improvement, and to be assessed to pay the damages, costs and expenses thereof are as follows: All lots and parcels of land fronting on each side of First street, from the west side of Los Angeles street to the west line of Alameda street; also all of the property of the railroads situated upon said First street between said points shall also be assessed to pay said costs, damages and expenses."

This is not a compliance with the provisions of the above section of the statute, for a resolution "specifying the exterior boundaries" of the district to be assessed to pay the cost of the improvement. The only boundaries of the district which are "specified" are the lines of First street between Los Angeles and Alameda streets, and these instead of being the "exterior boundaries" of the district to be assessed, are only the boundaries of a tract within the district which is exempted from assessment. There is nothing in the description of the district from which its extent in either direction from First street can be ascertained, or by which any one can determine the quantity of land which is to be assessed.

A very obvious reason for this requirement of the statute is that each owner of property within the district may be informed of the extent of territory which is to bear the burden of the improvement, and thus by calculating the relative burden upon himself determine whether

the burden to be borne by himself will be so disproportionate to the benefit of the improvement that he can make suitable representations to the city council when it comes to act upon the ordinance in pursuance of its resolution of intention. While each owner of property may know the depth and area of his own lot within the district, he is not presumed to know that of the other lot owners, and consequently cannot know the relative proportion of the expense which he will be called upon to bear, and cannot intelligently make any objections before the council "to the extent of the district of lands to be affected or benefited by said work or improvement;" which by Sec. 4 of the statute he is authorized to make and have considered by the council. Irrespective of such reason, however, it is a sufficient reason that the legislature has prescribed this as a requirement to be observed by the city council, and one of the steps to be taken by it before it can have any jurisdiction in the matter; and it is a fundamental principle in proceedings of this character that every requirement of the statute which has a semblance of benefit to the owner must be observed in order to give to the municipality jurisdiction in the premises. After the jurisdiction has once been acquired subsequent proceedings can be attacked for only such irregularities as affect substantial rights, but for the purpose of acquiring jurisdiction every requirement must be regarded as of equal necessity.

The plaintiffs did not waive their right to object to this want of jurisdiction by the fact that they appeared before the city council and filed objections to the improvement, and afterwards protested against the report of the commissioners. If the city council failed to acquire jurisdiction of the subject matter of the improvement, it could not acquire jurisdiction by the consent of the plaintiffs, much less by the fact that they objected to the improvement. It was said in *Hewes v. Reis*, 40 Cal., 263: "The right to appear before the board and object cannot certainly excuse the performance of those acts which are conditions precedent to the exercise of the power, nor does this right of remonstrance possess the least semblance of a remedy for a wrong that may be committed notwithstanding the protest;" and the actual appearance and protesting cannot have any greater effect for the purpose of conferring jurisdiction than the unexercised right of so appearing and protesting.

The judgment is affirmed. HARRISON, J.
We concur, DE HAVEN, J., PATERSON, J.

Supreme Court of Ohio.

STATE OF OHIO, BY G. FOX, A TAX-PAYER, ETC., v. RAINES, AUDITOR, AND RATTERMAN, TREASURER.

A statute, whatever terms it may employ, the only effect of which is to increase the salary attached to a public office, contravenes section 20 of Article II of the constitution of this State, in so far as it may affect the salary of an incumbent of the office during the term he was serving when the statute was enacted.

Decided June 28, 1892.

ERROR to the Circuit Court of Hamilton County.

The court of common pleas sustained a demurrer to the petition; the cause was then appealed to the circuit where the same ruling was made, and the petition dismissed. Thereupon the plaintiff instituted the present proceedings to obtain a reversal of the judgment of the circuit court.

By the Court:

This action was brought by a taxpayer of Hamilton County to test the constitutional operation of section 897a of the Revised Statutes, passed March 8, 1888; 85 Ohio Laws, 76. This section only applies to Hamilton County, and is in the following terms:

"Section 897a. In counties in which, by the last federal census, the population amounted to two hundred and fifty thousand, or upwards, each commissioner shall be allowed for expenses incurred by said commissioner, in the proper discharge of his duties within said county, the sum of (\$1,000) one thousand dollars per annum. Said sum to be paid out of the county treasury on the warrant of the county auditor.

"Section 2. This act shall take effect on and after its passage. Passed March 8, 1888. Volume 85, page 76."

The constitutionality of this statute is assailed upon the ground that it increases the salary of the county commissioners of Hamilton County, during the terms for which they had been elected, and for that reason contravenes section 20 of article 2 of the constitution of 1851, which reads as follows:

"Section 20. The General Assembly, in cases not provided for in this constitution, shall fix the term of office and the compensation of all officers; but no change therein shall affect the salary of any officer during his existing term, unless the office be abolished."

This section of the constitution, as will be observed, denies to the General Assembly power to affect the "salary" of any officer during his existing term. In terms the statute in controversy allows a thousand dollars per

annum to each county commissioner for expenses incurred in the discharge of his duties within the county, the word salary not being used at all, and from this wording of the statute it is contended that it creates no increase of salary but merely allows compensation for expenses. Constitutional guarantees would afford but slight barriers to encroachments by any of the departments of the government, if the forbidden object, could be accomplished by simply using a form of words that did not name it in express terms. If the effect of the statute under consideration is to increase the salary of those county commissioners who were serving current terms of office, it is unconstitutional to that extent. The county commissioners of Hamilton County before the adoption of this statute were each entitled to two thousand dollars per annum and necessary traveling expenses when traveling outside of the county on official business. 83 Ohio Laws, 246. This was the full extent of the compensation allowed them by law, and whatever personal expenses they should incur while discharging their official duties within the county was not to be a charge upon the public treasury.

The act in question neither imposed new duties nor created additional expenses. It simply allowed each commissioner of Hamilton County to draw from the public treasury the sum of three thousand dollars, whereas before the act was passed his compensation was limited to two thousand dollars.

The one thousand dollars allowed by the section under consideration, as well as the two thousand dollars allowed by the former law, is a "reward paid to a public officer for the performance of his official duties," and is therefore "salary." 2 Bouvier, 606; Cowdin v. Huff, 10 Ind., 85; 2 Abb. Law Dic., 440.

It necessarily follows from the view of the statute we have taken, that to the extent that it sought to affect the salaries of officers during the terms which they were serving, when it was enacted, it is unconstitutional and void.

Judgment reversed.

THE COURTS.

Supreme Court of the District of Columbia.

IN EQUITY.—New Suits.

August 4, 1892.

14110. Martha T. Botts v. Edwin J. Botts. For divorce. Com. sols., Ralston & Siddons.

August 5.

14111. Catherine G. Lee v. Henry G. Lee. For divorce. Com. sol., Edmund Burke.

August 6.

14112. Maurice Goldberg v. Carrie Goldberg. For divorce. Com. sol., A. Sillers.

August 8.

14113. Thos. Dodson v. Annie Dodson. For divorce. Com. sol., E. M. Hewlett.

14114. Anna Lynch v. E. T. Matthews et al. For injunction. Com. sol., James Hoban.

14115. Maria I. Wildman v. Jos. C. Wildman. For injunction. Com. sol., Richard L. Wallach.

August 12.

14116. W. B. Pollard v. Mary Pollard. For divorce. Com. sol., C. Carrington.

August 13.

14117. Hamilton I. Rothrock v. Bessie Rothrock. For divorce. Com. sol., A. A. Lipscomb.

August 18.

14118. D. K. Hackman v. Martha Hackman. For divorce. Com. sol., W. P. Williamson.

14119. Clara R. Gage v. Edwin J. Gage. For divorce. Com. sol., W. A. Johnston.

14120. J. H. Brooks et al. v. Joseph G. Hester et al. For injunction. Com. sol., J. J. Darlington.

14121. Jno. F. Mountjoy v. Thos. M. Smith. To enforce mechanics' lien on lot C, Sq. 286. Com. sol., T. M. Fields.

14122. Louisa Sothoron et al. v. J. T. Sherier et al. For partition. Com. sol., E. B. Hay.

AT LAW—New Suits.

June 28, 1892.

33093. Frank Hume v. The District of Columbia. Damages, \$10,000. Pliffs. attys., W. A. Johnston and F. T. Browning.

33094. T. E. Young v. The District of Columbia. Damages, \$15,000. Pliffs. attys., W. A. Johnston and F. T. Browning.

33095. P. Lattner v. The District of Columbia. Damages, \$12,000. Pliffs. atty., W. A. Johnston and F. T. Browning.

33096. C. H. Clark v. The District of Columbia. Damages, \$8,000. Pliffs. attys., W. A. Johnston and F. T. Browning.

33097. Rose Ann Lynn, admx., v. The District of Columbia. Damages, \$7,000. Pliffs. attys., W. A. Johnston and F. T. Browning.

33098. Caroline W. Plugge v. The District of Columbia. Damages, \$6,500. Pliffs. atty., W. A. Johnston and F. T. Browning.

33099. C. Christiani v. The District of Columbia. Damages, \$6,000. Pliffs. attys., W. A. Johnston and F. T. Browning.

33100. Jno. Fegan v. The District of Columbia. Damages, \$5,000. Pliffs. attys., W. A. Johnston and F. T. Browning.

June 29.

33101. Mary L. Faunce v. The District of Columbia and the Treasurer of the United States of America. Certiorari. Pliffs. attys., Birney & Birney.

33102. The American Security and Trust Co. v. The District of Columbia. Damages, \$5,000. Pliffs. attys., W. A. Johnston and F. H. Mackey.

33103. B. Light v. A. Eiznar. Account, \$195.25. Pliffs. atty., R. A. Spencer.

33104. T. E. Wells & Co. v. S. Lemon Hoover. Account, \$844.33. Pliffs. atty., R. H. Spencer.

June 30.

33105. P. Moore v. The District of Columbia. Damages, \$5,000. Pliffs. atty., A. Hoehling, Jr.

33106. Fink Bros. & Co. v. E. T. Gibbons. Judgment of Justice Strider, \$53.24.

33107. Rodier & Co. v. The District of Columbia. Damages, \$10,000. Pliffs. attys., Riddle & Davis.

33108. Phil. N. Dwyer v. The District of Columbia. Damages, \$2,000. Pliffs. atty., M. J. Colbert.

33109. The Arlington Fire Insurance Co. of the District of Columbia v. Ara M. Daniels, admr. of Jos. Daniels, deceased. Account of rent, \$495. Pliffs. atty., C. Carlisle.

July 1.

33110. Thos. Blagden v. The District of Columbia. Certiorari. Pliffs. attys., Cole & Cole.

July 2.

33111. C. F. Willett v. W. E. Prall. Note, \$148.07. Pliffs. attys., Phillips & McKenney.

July 5.

33112. C. B. Cheshire v. S. Wells. Replevin. Pliffs. attys., G. K. French and H. P. Okie.

33113. R. A. Phillips v. L. E. Garrison. Judgment of Justice Taylor, \$95.21.

July 6.

33114. Julius Lansburgh v. D. P. Syphax. Note, \$250. Pliffs. attys., Woodard & Lipscomb.

33115. Theresa M. Gill v. Thos. B. Stahl. Replevin. Pliffs. atty., T. L. Jeffords; Defts. atty., W. H. Sholes.

July 7.

33116. Jno. Cullen, admr., v. The B. & P. RR. Co. Damages, \$10,000. Pliffs. attys., Henkle & Duhamel.

33117. John O'Mera v. The District of Columbia. Certiorari. Pliffs. attys., Cole & Cole.

33118. Mary H. Brown v. Annie Crawford. Appeal. Defts. atty., O. B. Hallam.

33119. Surviving partner of G. G. Cornwell & Son v. Laura A. Whitney. Account, \$104.45. Pliffs. atty., E. H. Thomas.

33120. Standard Oiled Clothing Co. v. E. G. Wheeler. Note, \$250. Pliffs. attys., H. W. Garnett and D. S. Mackall.

33121. H. W. T. Jenner v. Susan Klieber.

33122. Gitthens, Rexsaumer & Co. v. Carl Deutelin.

33123. R. H. Sorrell v. L. C. Handy. Note, \$271.25. Pliffs. atty., Jno. B. Larner.

July 8.

33124. Geo. R. Hill & Co. v. C. J. Lally. Account, \$250.15. Pliffs. atty., H. O. Claughton.

July 11.

33145. Jas. L. Barbour & Son v. W. E. Swart. Account, \$564.04. Pliffs. attys., Sheppard & Lavender.

33126. Katherine Sheridan v. Frank J. Bell. Damages, \$1,800. Pliffs. atty., E. H. Thomas.

33127. Frederic P. Dewey v. Cornelius O. Truesdell. Account, \$168.50. Pliffs. atty., Jno. Ridout.

July 12.

33128. J. Chambers v. W. H. Abbott. Account, \$202.63. Pliffs. atty., Leon Tobriner.

July 13.

33129. The Chester Foundry and Machine Co., ex rel. J. F. Black, assignee, v. The National Press Brick Co. Note, \$5,000. Pliffs. attys., H. O. Claughton and Geo. Mushback.

33130. L. C. Vanuxem et al. v. C. A. Kram.
Notes, \$151.45. Pliffs. attys., H. W. Garnett and
D. S. Mackall.

33131. Worthington, Smith & Co. v. D. J.
Goldenburg. Account, \$1,285.35. Pliffs. attys.,
H. W. Garnett and D. S. Mackall.

The manufacure of Blanks logically belongs,
and must inevitably remain in the hands of a
concern composed of lawyers, and which has
the enterprise and capital to equip a perfectly
appointed printing office, and engage the best
talent to manufacture the same. Made pri-
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Legal Notices.

Rule of Court.

RULE 20. * * * * * Hereafter all notices which relate to
proceedings in the Supreme Court of the District of Columbia,
the publication of which is required by law or by rules of
Court, or by any order of Court, shall be published in THE
WASHINGTON LAW REPORTER, during the time required by
law, in addition to any other papers which may be specially
ordered or which may be selected by the parties.

FIRST INSERTION.

This is to Give Notice

That the subscriber of the District of Columbia, hath ob-
tained from the Supreme Court of the District of Columbia,
holding a special term for Orphans' Court business, letters
of administration on the personal estate of RICHARD
GUNDLACH, late of the District of Columbia, deceased.

All persons having claims against the said deceased are
hereby warned to exhibit the same, with the vouchers there-
of, to the subscriber, on or before the 12th day of August next;
they may otherwise by law be excluded from all benefit of
the said estate.

Given under my hand this 12th day of August, 1892.

EDWARD KOLE,
811 E St. n. w., city.

34 No. 5082. Ad. D. 18. B. W. Lacy, Proctor.

This is to Give Notice

That the subscribers of the District of Columbia, have ob-
tained from the Supreme Court of the District of Columbia,
holding a special term for Orphans' Court business, letters
of administration on the personal estate of WILLIAM B.
MOSES, late of the District of Columbia, deceased.

All persons having claims against the said deceased are
hereby warned to exhibit the same, with the vouchers there-
of, to the subscriber, on or before the 24th day of June next;
they may otherwise by law be excluded from all benefit of
the said estate.

Given under our hands this 24th day of June, 1892.

WILLIAM H. MOSES.
HABRY C. MOSES.
ARTHUR C. MOSES.

34 E. B. Hay and Cole & Cole, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, Holding a Special Term for Orphans' Court Business.

Thru 19th day of August, 1892.

In re estate of MARY ALICE MAGRUDER DOWNMAN,
late of Georgetown, D. C. No. 5145. Ad. D. 18.

Application having been made for the probate of a paper-
writing propounded as the last will and testament, and for
letters testamentary on the estate of said Mary Alice Magruder
Downman, deceased, by Cynthia R. Downman:

Notice is hereby given to all concerned to appear in this
court on Friday, Sept. 16th, 1892, at 11 o'clock a. m., to show
cause, if any exist, against the granting of such application.

A copy of this order shall be published in the Washington
Law Reporter and Evening Star once in each of three suc-
cessive weeks before said day.

By the Court. CHARLES P. JAMES, Justice.
A true copy. Teste. L. P. WRIGHT, Reg. of Wills, D. C.
34 Gordon & Gordon, Proctors for applicant.

Legal Notices.

This is to Give Notice

That the subscriber, of the District of Columbia, has ob-
tained from the Supreme Court of the District of Columbia,
holding a special term for Orphans' Court business, letters
of administration on the personal estate of JOHN T.
C. CLARK, late of the District of Columbia, deceased.

All persons having claims against the said deceased are
hereby warned to exhibit the same, with the vouchers there-
of, to the subscriber, on or before the 7th day of July next;
they may otherwise by law be excluded from all benefit of
the said estate.

Given under my hand this 7th day of July, 1892.

GEO. W. WISE,
2900 M St. n. w.

34

This is to Give Notice

That the subscriber, of the District of Columbia, has ob-
tained from the Supreme Court of the District of Columbia,
holding a special term for Orphans' Court business, letters
testamentary on the personal estate of MARY A. GALT,
late of the District of Columbia, deceased.

All persons having claims against the said deceased are
hereby warned to exhibit the same, with the vouchers there-
of, to the subscriber, on or before the 16th day of August next;
they may otherwise by law be excluded from all benefit of
the said estate.

Given under my hand this 19th day of August, 1892.

HENRY E. DAVIS,
Fendall Building.

34 H. E. Davis, Proctor.

SECOND INSERTION.

This is to Give Notice

That the subscriber, of the District of Columbia, hath ob-
tained from the Supreme Court of the District of Columbia,
holding a special term for Orphans' Court business, letters
of administration on the personal estate of JAMES THOMP-
SON, late of the District of Columbia, deceased.

All persons having claims against the said deceased are
hereby warned to exhibit the same, with the vouchers there-
of, to the subscriber, on or before the 9th day of August next;
they may otherwise by law be excluded from all benefit of
the said estate.

Given under my hand this 9th day of August, 1892.

CHAPIN BROWN,
323 1/2 St. n. w.,
Washington, D. C.

This is to Give Notice

That the subscriber, of the District of Columbia, hath ob-
tained from the Supreme Court of the District of Columbia,
holding a special term for Orphans' Court business, letters
testamentary on the personal estate of HENRY D. BOTE-
LER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are
hereby warned to exhibit the same, with the vouchers there-
of, to the subscriber, on or before the 9th day of August next;
they may otherwise by law be excluded from all bene-
fit of the said estate.

Given under my hand this 9th day of August, 1892.

CHAPIN BROWN,
323 1/2 St. n. w.,
Washington, D. C.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, Holding a Special Term for Orphans' Court Business.

August 13, 1892.

In the case of Warren I. Collamer, administrator c. t. a. of
PHILIP THOMAS, deceased, the administrator afore-
said has, with the approval of the court, appointed
Friday, the 16th day of September, A. D. 1892, at 11 o'clock
a. m. for making payment and distribution under the
court's direction and control; when and where all creditors
and persons entitled to distributive shares (or legacies) or a
residue, are hereby notified to attend in person or by agent
or attorney duly authorized, with their claims against the
estate properly vouched; otherwise the administrator c. t. a.
will take the benefit of the law against them.

Provided a copy of this order be published once a week
for three weeks in the Washington Law Reporter pre-
vious to the said day.

Test:

L. P. WRIGHT,

Register of Wills for the District of Columbia.

34 No. 3317. Ad. D. 14.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of JULIA LIESMANN, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of August, 1892.

CHARLES LIESMANN,

33 John A. Barthel, Proctor.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business.**

August 11th, 1892.

In the case of Joseph Packard, Jr., administrator d. b. n. c. t. a. of WALTER JONES, deceased, the administrator aforesaid has, with the approval of the court, appointed Friday, the 9th day of September, A. D. 1892, at 12 o'clock m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Washington Post previous to the said day.

Test: L. P. WRIGHT,

Register of Wills for the District of Columbia.
33 No. 116. Ad. D. 8.

This is to Give Notice

That the subscriber, of District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of ANNA E. WORMLEY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 11th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 11th day of August, 1892.

W. H. A. WORMLEY,
Park St., Mt. Pleasant.

33 No. 5118. Ad. D. 18. Wm. H. Dennis, Proctor.

THIRD INSERTION.**This is to Give Notice**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of WILLIAM F. STIDHAM, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 5th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 5th day of August, 1892.

A. D. STIDHAM,
1011 T St. n. w.

32 No. 5115. Ad. D. 18. M. P. Andrews, Proctor.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration c. t. a. on the personal estate of ALCINDA M. ROBINSON, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of August, 1892.

G. P. ROBINSON,
Atlantic Bldg.

32 No. 4824. Doc. 17. Gordon & Gordon, Proctors.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business.**

August 5th, 1892.

In the case of Mary Middleton, administratrix of JOHN H. MIDDLETON, deceased, the administratrix aforesaid has, with the approval of the court, appointed Friday, the 16th day of September, A. D. 1892, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the administratrix will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test:

L. P. WRIGHT,
Register of Wills for the District of Columbia.
32 No. 4388. Ad. D. 16. George F. Williams, Proctor.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business.**

August 5, 1892.

In the case of John B. Buckley, administrator of the estate of PATRICK CRONIN, deceased, the administrator aforesaid has with the approval of the court, appointed Friday, the 2d day of September A. D. 1892, at 10 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the said administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test:

L. P. WRIGHT,
Register of Wills for the District of Columbia.
32 No. 4261. Ad. D. 16. Neal T. Murray, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Edward T. Mathews et al., Trustees, { In Equity. No. 13,628.
vs.
Rachel B. Mathews et al. }

Edward T. Mathews and John Ridout, trustees, having reported a sale of the west twenty four (24) feet two (2) inches front on E street by depth of forty five (45) feet of original lot three (3) in square numbered four hundred and eighty eight (488) in the city of Washington, District of Columbia, to Samuel K. Behrend, for \$300.00 cash: It is this 9th day of August, 1892, ordered, that said sale will be finally ratified and confirmed on the 9th day of September, 1892, unless cause to the contrary be shown before said day.

Provided a copy of this order be inserted in each of the three successive issues of the Washington Law Reporter published next after the date of this order.

E. F. BINGHAM, C. J.

A true copy. Test: J. R. Young, Clerk.
32 No. 4261. By L. P. Williams, Asst. Clerk.
[Filed August 9, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 11th day of August, 1892.

Charles Gambrall
vs.
Michael Leonard and others. } No. 13,768. Equity Doc. 33.

On motion of the plaintiff, by Messrs. Callaghan & Taylor, his solicitors, it is ordered that the defendants, MICHAEL LEONARD, ANN LEONARD, his wife, and the Unknown Heirs of RICHARD FRENCH, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to enforce plaintiff's claim for \$1,600 against lots 69 and 70 in French's subdivision of lots in square 28 in Washington, D. C., for board, care, maintenance of their ancestor a certain Richard French.

Provided, this order shall be published once a week for three weeks in the Washington Post and in the Washington Law Reporter.

By the Court. CHARLES P. JAMES, Justice, &c.
32 True copy. Test: J. R. Young, Clerk.

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WASHINGTON, D. C., - - - - SEPTEMBER 1, 1892

**Acts and Joint Resolutions of the 52d
Congress, relating to District of
Columbia matters, continued
from No. 34 of Vol. XX.**

An act to provide for semi-annual statements
by foreign corporations doing business in
the District of Columbia.

Be it enacted by the Senate and House of
Representatives of the United States of Amer-
ica in Congress assembled, That any insur-
ance company, building association or com-
pany, banking company, savings institution,
or other company or association advertising
for or receiving premiums, deposits, or
dues for membership, incorporated under
the laws of any other State, Territory, or
foreign government, and transacting business
within the District of Columbia, shall publish in
at least two daily papers printed in the District
of Columbia semi-annually, during the months
of March and September of each year, a full
statement, under oath, showing their capital
stock and the amount paid in on account of the
same, assets, liabilities, debts, deposits, divi-
dends and dues, as well their current expenses
during six months ending January and July
preceding.

SEC. 2. That any such company, association,
or institution failing to publish statements as
required by the first section of this act shall
forfeit its right to do business in said District,
and thereupon it shall be the duty of said Com-
missioners to revoke its license or permit to do
business in said District: *Provided*, That fra-
ternal beneficiary associations or societies doing
business on the lodge plan and paying death
benefits be exempted from the provisions of
this act.

Approved, July 29, 1892.

AN attorney cannot recover from the client for
services rendered on the procurement of another
attorney who was neither employed nor recog-
nized by the client as his attorney. *Brown v.
Underhill*, (Ind. App.) 30 N. E., 430.

**Supreme Court of the District of Columbia.
IN GENERAL TERM.**

S. SMITH HOOVER AND LUTHER B.
SNYDER, Plaintiffs, APPELLANTS,

v.

HATHAWAY, SOULE & HARRINGTON, De-
fendants (a Corporation), APPELLEES.

1. The Act of the General Assembly of Maryland, of 1795, relating to attachment and garnishment [Kilty's Laws, Md., 1795, Ch. LVI.] is now in force in the District of Columbia.
2. The Act of Congress of 1886 [14 Stat., p. 54; R. S. D. C., Sec. 782 et seq.] regulates merely the procedure before and after the issuing of the writ, and leaves the character of the demands upon which the writ of attachment may issue, as it was under the existing Maryland law.
3. If the Act of Maryland of 1795 requires that in order to justify the issuing of the writ of attachment, the amount due shall be directly ascertained by the contract, or that the standard upon which the amount may be com-
puted shall be fixed by the contract, it is still essential in this District.
4. In the present case the contract set up in the affidavits in support of the declaration and in the declaration itself, is simply a contract to sell and deliver by a certain day certain goods. No standard is fixed by the contract by which the damages sustained for a breach of it can be ascertained.
5. Inasmuch as this action is not brought to recover an ascertained indebtedness due under contract, but that the cause of action is breach of contract to deliver goods, and no standard is fixed by the contract by which the amount of damages for its breach could be ascertained by computation, the writ of attachment and garnish-
ment was properly quashed by the court in Special Term, and its order is affirmed.

At Law. No. 31,160. Decided June 20, 1892.

The CHIEF JUSTICE and Justices HAGNER, JAMES and
BRADLEY sitting:

BIRNEY & BIRNEY, attorneys for plaintiffs.
ALEXANDER PORTER MORSE, attorney for
Havenner & Davis, garnishees.

Mr. Justice BRADLEY delivered the opinion of
the Court:

This case is here upon the plaintiff's appeal
from the order of the Circuit Court quashing a
writ of attachment and garnishment. The
action was brought against the defendant, a
foreign corporation. Service of summons was
not obtained upon it in any way, and a writ of
attachment and garnishment was issued based
upon affidavits filed subsequent to the filing
of the declaration. That writ of attachment
and garnishment was served upon Havenner &
Davis, co-partners, doing business in the District
of Columbia. A motion to quash the writ was
filed by the garnishees, based substantially upon
two grounds, though nine grounds are named.
The first is, "Because the declaration and sup-
porting affidavits show that this is an action

sounding in unliquidated damages, on account of alleged breach of contract by defendant, and not an action upon liquidated demand." The second is, "Because it is not alleged that any contract was executed and subscribed by and between plaintiff and defendant, and because the affidavits, which are the basis of the writ, are insufficient in law."

It is necessary to read the declaration, as well as the affidavits upon which the writ issued, in order get at the substantial points involved in this motion. The declaration alleges "That, in July, 1890, the plaintiffs were about to enter upon the business of retail dealers in boots and shoes at Washington, and proposed to open a store or place of business on September 1, following; that defendant was a manufacturer of shoes, and by its officers was informed of plaintiff's purposes, and well knew the same. And thereupon, and being so informed, defendant undertook and agreed to and with the plaintiffs that it would manufacture for plaintiff a great quantity of boots and shoes, to wit, one thousand pair of various sizes, qualities, prices and descriptions agreed upon, and deliver them within a reasonable time, to wit, the aforesaid 1st day of September, 1890; and the plaintiffs agreed to pay for the same. But defendants did not deliver said goods at any time; and, by reason of the neglect and failure of defendant to deliver said goods according to promise, plaintiffs could not and did not open their place of business on the 1st day of September, 1890, nor for a long period of time thereafter, to wit, until September 15, 1890, and were put to great expense in the procurement of other goods in the place of those so agreed by the defendant to be delivered, and were unable to procure other and suitable goods until about December 1, 1890, and thereby were unable to supply the demands upon them, made by their customers, and lost great profits which would have come to them in the sale of such goods, and were otherwise hindered, delayed and embarrassed and annoyed in their said business, to the great damage of the plaintiffs, to wit, \$3,000.

And plaintiffs claim \$1,500 damages, etc.

The principal affidavit in support of this writ was made by Luther B. Snyder, one of the plaintiffs, who says, substantially, that the plaintiffs made a contract with the defendants to deliver to them a large quantity of boots and shoes before the 1st day of September, 1890, and that the defendant did not deliver the goods or any part thereof, nor give any reasonable excuse for failing so to do. That the refusal was not communicated to the firm of the plaintiffs

until it was too late to purchase other goods so as to open their store on the 1st day of September and they were unable to supply the place of the goods contracted for, until about the 1st day of January, 1891, and that they did not open their store until September 15, 1890, and wholly lost the rent paid by them for the store-room up to that time, which was at the rate of \$150 per month, and they lost in great part the use of the store until December 1. They were also obliged to purchase other goods from other makers, paying higher prices, and they lost in difference of prices about \$195.75. They also lost the wages of the employee who was engaged, and sustained other losses and damages traceable directly to said breach of contract." Then he states that he verily believes that his firm has a just right to recover for the breach of contract the amount named in the declaration, viz: \$1,500. The supporting affidavit is by one Willie M. Snyder, who says: "I am and have been since October 1st, 1890, a clerk in the employ of Hoover & Snyder, plaintiffs in cause in cause No. 31,190, at Law, against Hathaway, Soule & Harrington. I am a brother of Luther P. Snyder, of said firm, and am familiar with said firm's cause of action in said case.

"I know that in July, 1890, said Hathaway, Soule & Harrington, accepted in writing an order for the manufacture and delivery to said Hoover & Snyder of a quantity of shoes (being more than six hundred pairs) and agreed to deliver the same at Washington, D. C., for certain prices specified in said writing. I know that said Hoover & Snyder expected to open their store for business on September 1, 1890, and expected to have the goods so contracted for as a large part of their stock in trade. I saw said writing a short time after it was made. Said goods were not delivered, but before September Hoover & Snyder were notified by defendants that they could not have the goods.

"Hoover & Snyder did not open their store until September 15, 1890, and this was for want of the necessary stock in trade, as I believe. I also know that they were obliged to pay higher prices for goods bought to take the place of those contracted to be delivered by defendant, and went to expense in traveling, &c., to place orders for goods to take their place, and even then they were unable to procure such goods until long after September 1, 1890, and their trade suffered accordingly. Said firm also suffered losses of other kinds because of such breach, and were hindered, delayed and damaged in their business until about the 1st of January, 1891, by reason thereof.

"They have just right to recover damages from said Hathaway, Soule & Harrington, as claimed in their declaration."

It is claimed in behalf of the garnishee, that the *meane* process of attachment and garnishment will not lie for a cause of action of this indefinite character. It is claimed that the act of the Assembly of Maryland of 1795, is still in force in the District of Columbia; that under that act it is essential that there shall exist an indebtedness between the defendant and the plaintiff, either ascertained definitely by the contract or, ascertainable under the contract by some fixed standard which is named in the contract itself. That otherwise the claim is for unliquidated damages, and that it would be impossible to specify the amount due as required by that act. It is claimed on the other hand by the plaintiffs, that the measure of damages in this case is ascertained by a fixed standard *in law*; that the plaintiffs are entitled to recover the difference between the price agreed to be paid and that paid for other goods, the rent of the store during the time they were unable to use it, and any other positive or direct loss resulting plainly from the breach of the contract. The principal question then is whether it is sufficient to show a case by the declaration, and the affidavits, in which the law has fixed certainly the right to recover damages, or whether it is essential that the contract, which is the foundation of the action, shall fix some standard by which damages can be definitely ascertained. There can be no doubt that the Act of Maryland of 1795 is in force in this District. It has been so expressly held in the case of Wallace, Elliot & Co. v. Maroney, 6 Mackey, 221. The question involved in that case being the right of the actual owner to intervene in the proceedings and defend his property from condemnation under the attachment. The court say: "The provisions of our Revised Statutes were only designed to change the existing law and practice in the District, so as to authorize the clerk to issue the attachment without a previous warrant from a judge or justice, and to prescribe the formalities which should precede and follow the issue of the writ; but nothing in those sections deny any previous right of the owner existing in the District to intervene in the proceedings for the protection of his property."

Now the act of Maryland provides "That if any person whatsoever, not being a citizen of this State, and not residing therein, shall or may be indebted unto a citizen of this State, or of any other of the United States, or if any

citizen of this State, indebted unto another citizen thereof, shall actually run away and abscond or fly from justice, or secrete him or herself from his or her place of abode, with intent to evade the payment of his or her just debts, such creditor, may in either case, make application to any judge of the general court, justice of the county court, or justice of the peace; and on the oath and affirmation of such creditor, made before any judge of the general court, justice of the county court, justice of the peace of this State, or before any judge of any other of the United States, that the said debtor is bona fide indebted to him or her in the sum of \$—, over and above all discounts, and at the same time producing the bond or bonds, bill or bills, protest bill, or bills of exchange, promissory note or notes, or other instrument or instruments of writing, account or accounts, by which said debtor is so indebted," and upon oath or affirmation as to non-residence of the debtor, etc., "said judge of the general, justice of the county court or justice of the peace, shall be, and he is hereby fully authorized and required forthwith to issue his warrant to the clerk of the general or of the county court, as the case may require," etc.

We are of opinion that the Act of June 1, 1866, in force in this District, regulates merely the procedure for and after the issuing of the writ, and that it leaves the character of the demands in actions at law upon which the writ of attachment may issue as it was theretofore under existing law, and that, if the Act of Maryland of 1795 requires that in order to justify the issuing of the writ of attachment, the amount due shall be directly ascertained by the contract, or that the standard upon which the amount may be computed shall be fixed by the contract, it is still essential in this District. This has been distinctly settled in the State of Maryland. Wilson vs. Wilson, 8 Gill., 192; Warwick v. Chase, 23 Md., 154. In the case of Clark's Executors v. Wilson (3 Wash. C. C., 500), Mr. Justice Washington, announcing the decision of the court, said (referring to the case of Fisher v. Consequa, 2 Wash. C. C., 382): "The principle decided in that case was, that a demand arising *ex contractu*, the amount of which was ascertained, or which was susceptible of ascertainment by some standard, referable to the contract itself, sufficiently certain to enable the plaintiff, by affidavit, to aver it or a jury to find it, might be the foundation of a proceeding by way of foreign attachment, without reference to the form of action, or the technical definition of debt, 'the expression used in the law.'" And then he pro-

ceeded with the case under consideration, and said: "This, then, is a case in which unliquidated damages are demanded; in which the contract alleged as cause of action affords no rule for ascertaining them; in which the amount is not and cannot, with propriety, be averred in the affidavit; and which is and must be altogether uncertain until the jury have ascertained it, for which operation no definite rule can be presented to them. In our opinion, it has not one feature of resemblance to the case of Fisher v. Consequa."

In the case of Warwick v. Chase, the court refers to several cases, and among others to the case of Wilson v. Wilson, 8 Gill., 192, and says: "The general rule in such cases is, that unliquidated damages, resulting from a violation of contract, cannot be recovered by attachment unless the contract affords a certain measure or standard for ascertaining the amount of damages, without the aid of inferences from extrinsic facts or circumstances."

In the case at bar the contract set up in the affidavits in support of the declaration and in the declaration itself is simply a contract to sell and deliver by a certain day certain goods. No standard is fixed by the contract by which the damages sustained for a breach of it can be ascertained. The statement of the contract itself, in the declaration and in the affidavits as well, is very indefinite. The affidavits do not show any specific amount of damage such as could be made the foundation for a writ of this character. Under the Act of 1866 the affidavits should be held insufficient to sustain the writ because of their indefiniteness. It is not necessary, however, to base the decision upon that ground. We are of opinion, that, inasmuch as this action is not brought to recover an ascertained indebtedness due under contract, but that the cause of action is breach of contract to deliver goods, and no standard is fixed by the contract by which the amount of damages for its breach could be ascertained by computation, the writ of attachment and garnishment was properly quashed by the court in special term, and its order should be affirmed; and it is so ordered.

EMPLOYMENT of attorneys by a board of county commissioners to protect the interests of the county on an appeal by land owners from a ditch assessment by the deputy county surveyor, which is defended in the name of the surveyor, is authority for their appearance as attorneys for the latter on such appeal. *Stingley v. Nichols S. & Co.*, (Ind.) 30 N. E., 34.

New York Court of Appeals. SECOND DIVISION.

BENNER v. ATLANTIC DREDGING CO.

TORTS—WHAT CONSTITUTE—BLASTING UNDER CONTRACT WITH THE UNITED STATES— HARBORS—AUTHORITY TO REMOVE OB- STRUCTIONS—APPEAL—OBJECTIONS WAIVED.

1. Defendant read in evidence without objection a contract made by him with one of the Corps of Engineers of the United States Army, "in behalf of the United States of America," and approved by the Chief of Engineers, U. S. A., authorizing him to do certain blasting, whereby were occasioned the injuries for which damages were sought. The court, without objection on plaintiff's part, stated that the authority was not denied, and that it could not be questioned, because the contract had been proved. Held, that plaintiff could not subsequently insist that the authority was not shown.
2. The United States has authority to make a contract for the removal of rock from a harbor.
3. One blasting in a harbor, in performance of a contract with the United States, is not liable for injuries to a house by the vibration of the earth and pulsation of the air, unless he is negligent.

Reversing 12 N. Y. Supp., 181.

Decided June 7, 1892.

APPEAL from Supreme Court, General Term, second department. This action was brought to recover damages caused to a house belonging to the plaintiff at Astoria, N. Y., by blasting done by the defendant in the waters of Hell Gate, between January 5, 1887, and April 12, 1888. The complaint alleged that the defendant did "wrongfully and unlawfully so discharge such blasts * * * as to shake, jar, damage and injure this plaintiff's said dwelling-house, * * * and to create a nuisance, and did so maintain such nuisance, and so negligently and carelessly blast such rock, * * * that plaintiff's said dwelling was sorely thereby shaken and injured," etc. The defendant pleaded, among other defenses, that such blasting "was done and performed under and by virtue of the authority of the United States, and under the direction of the officer of the engineer corps of the United States army in charge of said work; that such operations were a public necessity and requirement, and were duly performed in a lawful and careful manner, and without any default, negligence or carelessness upon the part of the defendant."

Evidence was given upon the trial tending to show that the plaintiff's house, which had been previously injured by explosions, was placed in good repair in November, 1886, and that afterward, through the blasting operations of the defendant, the foundations, walls and ceilings were cracked and injured, as alleged in the com-

plaint. The blasting was done by the defendant under a contract dated November 16, 1886, between "Lieut. Col. Walter McFarland, Corps of Engineers, U. S. Army, of the first part, and the Atlantic Dredging Co. * * * of the second part." It witnessed that "the said Lieut. Col. Walter McFarland, for and in behalf of the United States of America, and the said Atlantic Dredging Co.," had mutually agreed, etc. The subject of the contract was the removal of fifty thousand tons of broken rock from Middle reef, or Flood rock, Hell Gate, New York, at a certain price per ton, subject to inspection "by an inspector appointed on the part of the government." The specifications provide that "the contractor will do such surface blasting as may be necessary, at his own expense." The contract was signed, "Walter McFarland, Lieut. Col. of Engineers. [L. S.]"—and by the defendant through its president, and was "approved November 29, 1886, by J. C. Duane, Brig. Gen., Chief of Engineers."

Other facts are stated in the opinion.

LANDON, J. The plaintiff contends that the defendant did not prove that it was authorized by the United States to blast the rocks in Hell Gate. The defendant had read in evidence, without objection, the contract under which it prosecuted the work of removing fifty thousand tons of broken rock from Hell Gate. This contract was made by Lieut. Col. Walter McFarland, Corps of Engineers of the United States army, as party of the first part, and recited that he made it "for and in behalf of the United States of America, * * * subject to the approval of the chief of engineers, U. S. A.," and was approved by that officer. The plaintiff also read a stipulation of the defendant's attorney that plaintiff might read in evidence the whole or part of the records of the War Department concerning the contract by the defendant to do the work in the Hell Gate improvement, and the work done by the defendant under the contract. The plaintiff did prove by Lieutenant Derby, an officer in the United States Government employ, that he was superintendent of the improvement, and as such kept a record of the progress of the work. Plaintiff read from this record, under the stipulation, matters relating to the explosions. Plaintiff also read in evidence a letter of Lieut. Derby to the defendant respecting the explosions. The plaintiff thus attempted to convict the defendant of improperly conducting the explosions, by the records of the War Department. The effort does not appear to have been successful. While the defendant had possession of the case,

its counsel was proceeding to give further evidence of the fact that its contract was with the United States, when the trial court interrupted him, and a colloquy ensued between the court and defendant's counsel, in which the court said: "There is nobody who says it [the contract] was not authorized. * * * These plaintiffs cannot question your right to be there, because you proved the contract which took you there. * * * Col. McFarland was in the habit of making contracts for the Government. I presume the Government recognized the contracts, and paid under them."

Defendant's counsel thereupon desisted from presenting further evidence respecting the proper authorization of the United States. There is no suggestion in the record that the plaintiff did not acquiesce in the views presented by the court. The court in charging the jury, after stating that large masses of broken rock were left in the bottom of East river as the result of a great explosion conducted by the United States Government in 1885, and that the rocks were dangerous to navigation, added: "The Atlantic Dredging Co. entered into a contract with the general Government for the destruction and removal of these fragments. * * * Under that contract they went upon the East river and commenced the destruction of these fragments, which were scattered about the bottom of the river. The defendant was thus justified in going there."

Upon these facts this court cannot entertain the suggestion that the defendant must fail because it did not show that in removing these masses of rock it was acting under the authority of the United States. Evidence had already been given tending to prove that it acted upon such authority. The stipulation and evidence adduced by the plaintiff implied that the fact was so. The defendant was giving further evidence to the same end, and practically was not allowed to give any more. The question was put to rest by the statement of the court to the effect that further proof was unnecessary. The plaintiff had the right to rely upon the direction given by the court. *Flora v. Carbean*, 38 N. Y., 111. True, the record does not present the plaintiff's exceptions. Why not? Because no exception taken by the plaintiff can aid him. He must defend his judgment against the attack of the defendant. The defendant can say, my authority from the United States was conceded, but I was beaten because the court held that that could not aid me. The plaintiff is not harmed, for if a new trial should be granted the plaintiff can contest the question of authority.

If a new trial should be refused because the authority was not sufficiently shown, the defendant will be beaten because denied a day in court upon the question of authority.

That the defendant's contract was with the United States cannot be questioned upon this appeal. But it is said the authority of the United States to make the contract must be shown. We know that Congress has exclusive power to regulate commerce, both foreign and interstate, and that the improvements of rivers and arms of the sea forming the highways of such commerce is vested in the United States. *Wisconsin v. Duluth*, 98 U. S., 379. Various acts of Congress of which we take judicial notice, since they are the supreme law of the land, appropriated moneys for the improvement of Hell Gate and authorized it. 22 U. S. Stat., 58, 191; 23 id., 133, 138; 24 id., 310, 318. Other statutes bear upon the subject. The United States is a sovereign nation, with full power over the subject matter, and may by statute provide for the exercise of that power in such legislative meagerness of form as suits itself. If its attempted exercise of power is complete according to its own judicial test, it is complete under ours. The case last cited is an exposition of the power of the United States under similar statutes, and we repose upon its authority. It must be held that the United States was competently authorized to make the contract, and in making it within its powers, both as to the subject-matter of the contract and the manner in which it engaged and authorized the defendant to perform it.

The learned trial court charged the jury that if the explosions conducted by the defendant injured the plaintiff's house, the defendant was liable, irrespective of the question of defendant's negligence; that the question of negligence was not in the case; that if the business could not be conducted without producing such injury, it must cease. We think this was erroneous. It is entirely clear that the defendant had all the authority of the United States to use all the means contemplated by the contract for the removal of these rocks, provided always that he used them carefully, care being a proper regard both to the efficient prosecution of the work and the rights of third persons, the absence of such care being negligence. The instruction of the trial judge eliminates negligence and assumes proper care. Thus the defendant had the authority of the United States to do the work carefully, and did it within such authority. It being lawful for the sovereign to exercise its lawful power, it must follow that

whatever results from its proper exercise is not unlawful, and if any injury, direct or consequential, results to the individual, he is remediless, except so far as the sovereign gives him a remedy. The Government has provided for such direct injuries as amount to a taking of private property for public use, by the constitutional provision that it must not be done without full compensation. If the present were such a case, it would seem that the plaintiff's remedy would be to make the proper application to the Government. The defendant, having done no more than it was fully authorized to do, and which its duty to the Government under the contract required it to do, would be blameless, and the Government liable because of its constitutional obligation. But this is not a case of taking private property, or of direct, but is of consequential injury. The plaintiff's house was three thousand feet distant from the place of the explosions. The injuries to it were caused by the shaking of the earth or pulsations of the air, or both, resulting from the explosions. There was no physical invasion of the plaintiff's premises by casting stones or earth or other substances upon them, as in *Hay v. Cohoes Co.*, 2 N. Y., 159; *Tremaine v. Same*, id., 163; *St. Peter v. Denison*, 58 id., 416, and hence no going outside of the authority actually conferred and conferrable, as in those cases. Nor was the work here prosecuted for the benefit of private ownership aided by the public grant of the privilege, as in *Cogswell v. Railroad Co.*, 103 N. Y., 10, and hence the rules applicable to other public grants of privileges to private parties or corporations have no force. This work was done under the Government, for the Government, and in no sense to the detriment of public rights or to the advantage of defendant's private ownership. The principles assumed in the last case cited amply support the defendant's position. One cannot confine the vibration of the earth or air within inclosed limits, and hence it must follow that if in any given case they are rightfully caused their extension to their ultimate and natural limits cannot be unlawful, and the consequential injury, if any, must be remediless. The defendant had the authority of the Government, and kept within it, and therefore is not liable. *Radcliff's Ex'rs v. Mayor*, 4 N. Y., 195; *Bellinger v. Railroad Co.*, 23 id., 42; *Marvin v. Iron Min. Co.*, 55 id., 538; *Uline v. Railroad Co.*, 101 id., 98; *Atwater v. Trustees*, 124 id., 602; *Transportation Co. v. Chicago*, 99 U. S., 635; *Wood Nuis.*, Sec. 752, quoted with approval in *Siefert v. City of Brooklyn*, 101 N. Y., 145. Criticism with respect to the extent to which

private and municipal corporations have been permitted to expand the authority given them by the Government to justify their invasion of private rights (*Cogswell v. Railroad Co., supra*) may be pertinent when such parties attempt the expansion for such purposes, but it can have no pertinency to a case where the Government itself seeks, by appropriate means plainly adapted to the end, to accomplish for the public benefit any of the objects confided to its jurisdiction. *McCullough v. Maryland*, 4 Wheat., 316-421.

The judgment should be reversed and a new trial granted, costs to abide the event.

Supreme Court of Rhode Island.

ODD FELLOWS' BENEFICIAL ASSOCIATION OF RHODE ISLAND

v.

CARPENTER.

MARRIAGE—COMMON-LAW MARRIAGE—EVIDENCE.

1. In proof of a ceremonial marriage, the marriage certificate or the record of evidence, or a witness thereof, must be produced.
2. Cohabitation for about five months between a man and a woman who was keeping house for him, without proof when it commenced, and the fact that he recognized her in his will as his wife, are not sufficient proof of reputation of their being husband and wife to support a common-law marriage, in view of the man's contradictory statements in that respect, and of a serious misunderstanding having arisen between him and his children from his relations with the woman.

Decided May 28, 1892.

INTERPLEADER between the Odd Fellows' Beneficial Association of Rhode Island, complainant, and Maria H. Carpenter and others, the children of John A. Carpenter, respondents, in which Maria H. Carpenter claims to be the widow of John A. Carpenter.

Mr. Justice TILLINGHAST delivered the opinion of the Court:

The respondent, Maria H. Carpenter, claims that she is the widow of John A. Carpenter, deceased, and as such is entitled to the fund in dispute, and the only issue of fact submitted to the court at the trial was whether she was his widow. In support of her claim, she testified that she kept house for the deceased from October, 1888, till February, 1890; that her first husband died in December, 1888; that she and the deceased shortly afterward agreed to be married to each other, and in pursuance thereof, on the 13th of February, 1889, went to Fall River, Mass., where a ceremonial marriage was solemnized by a clergyman authorized to solemnize marriages, or before a person who

was represented by the deceased to be so authorized, and whom she believed was so authorized. She did not produce any certificate of marriage, or any record evidence thereof, or any witness to the same. She could not give the name of the clergyman who performed the ceremony, nor could she tell upon what street or in what part of the said city he resided. She further testified that after said marriage she continued to live with the deceased as his wife till his death, which occurred on August 3, 1889. Evidence was also offered that the deceased, on one or more occasions, spoke of the respondent as his wife—one witness testifying that he introduced her to him as such—and also that they lived together, for a short time before the death of said John, apparently as husband and wife. It further appeared that the deceased made a will in which he referred to the respondent as his wife, and bequeathed to her all of his property, and constituted her as his sole executrix.

On the other hand, the respondents, the children of the said John A. Carpenter, offered evidence to the effect that in March, 1889, the deceased stated to one of the complainant's officers that he had no wife, and that on being visited during his illness in the same month by a member of the order, he spoke of the respondent as "Maria, a woman that keeps house for me;" also that the deceased on one occasion, upon being told that it was reported that he was married, he replied that "You mustn't believe everything you hear." Upon this state of the proof, the court was not satisfied that any ceremonial marriage between the deceased and the respondent ever took place, and so decided. The respondent now contends that notwithstanding her failure to prove a ceremonial marriage, as set up by her, yet that she has proved a common-law marriage, known as a marriage *per verba de presenti*, and hence that she is the widow of said John A. Carpenter, and entitled to said fund. The question as to the validity of such a marriage has not been decided by this court, nor do we find it necessary to decide it in this case; for even assuming that such a marriage is valid in this State, yet we are not satisfied that the proof submitted establishes the existence thereof. Leaving out of account the testimony of the respondent as to a ceremonial marriage which has already been passed upon by the court, there remains the evidence, that being a married woman, she lived with the deceased as his housekeeper from October, 1888, till the death of her husband in December, 1888, and that thereafter, and until August 3, 1889, she continued to live with the deceased in

some capacity; that to two or three persons he introduced her or spoke of her as his wife, while to others he denied that he had a wife, and spoke of her as his housekeeper; and, finally, that he referred to her in his will, dated July 19, 1889, as his wife, making her his sole legatee and executrix. This evidence, taken as a whole, and considered as favorably in behalf of the respondent as the circumstances will permit, shows the fact of cohabitation between the parties for a period of about five months, contradictory statements made by the deceased as to whether the respondent was his wife, and a will made by him, in which he recognizes her as his wife. We do not feel that, upon such proof as this, we should be warranted in holding that even a common-law marriage was established. In order to constitute a marriage *per verba de presenti*, the parties must agree to become husband and wife presently. The consent, which is the foundation and essence of the contract, must be mutual, and given at the same time; and it must not be attended by an agreement that some intervening thing shall be done before the marriage takes effect, as that it be publicly solemnized. That is to say, it must contemplate a present assumption of the marriage status, in distinction from a mere future union. Lord Brougham in Queen v. Mills, 10 Clark & F., 534, 708, 730; Clark v. Field, 13 Vt., 460. Being a civil contract, in so far, at any rate, as the entering into the marriage relation is concerned, it may be effected by any words in the present time without regard to form, (Hantz v. Sealy, 6 Bin., 405; 2 Kent Com., 7th ed., 51;) and like other civil contracts, it may doubtless be proved by circumstantial as well as by direct and positive evidence. Thus, as stated by Chancellor Kent: "The consent of the parties may be declared before a magistrate, or simply before witnesses, or subsequently confessed or acknowledged, or the marriage may even be inferred from continual cohabitation and reputation as husband and wife, except in cases of civil actions for adultery, or in public prosecutions for bigamy or adultery, when actual proof of the marriage is required." But, while this is so, it does not follow that courts will infer the existence of such a marriage from loose and inconclusive evidence, especially where, as here, such a marriage is in violation of the penal law of the State, which it is not to be presumed the parties have violated. See Pub. Stat. R. I., Chap. 163, Sec. 14. Proof of reputation and continuous cohabitation for a long period of time has been held sufficient to establish a marriage for civil pur-

poses, while proof of cohabitation alone has generally been held to be insufficient. Com. v. Stump, 53 Penn. St., 132, 135. The cases cited by the counsel for the respondent in support of his contention as to the sufficiency of the evidence of cohabitation to establish a common-law marriage, are each of them cases in which the evidence was much stronger than in the case at bar. Thus, in Yates v. Houston, 3 Tex., 433, the parties had cohabited for the period of five years, three children had been born of the union, and they had been officially recognized as husband and wife, and so classed by the census of the colony where they lived. In Fenton v. Reed, 4 Johns., 52, the parties had cohabited together as husband and wife, under the reputation and understanding that they were such, from 1800 to 1806, when the husband died, and the wife during this time had sustained a good character in society. In Rose v. Clark, 8 Paige, 574, the parties lived together as husband and wife, for more than seven years, having children and holding themselves out to the world as husband and wife, and being regarded by the community as such. In Donnelly v. Donnelly's Heirs, 8 B. Monr., 113, the proof showed that the parties had cohabited as husband and wife, under the reputation that they were such, for twenty years, and had raised a family of children. In O'Gara v. Eisenlohr, 38 N. Y., 296, the parties lived and cohabited together for seven years, during all of which time they were received in the communities where they lived as man and wife, and were so regarded and understood by all their neighbors. See also Hicks v. Cochran, 4 Edw., Ch. 107. In the case at bar, while there is proof of cohabitation for a few months, it does not appear when it commenced, nor does it appear that the parties ever obtained the reputation of being husband and wife. The fact that the deceased referred to the respondent as his wife in his will, and made her his sole legatee and executrix, is not, in our judgment entitled to much weight, in view of the evidence which was submitted at the trial to the effect that a serious unpleasantness had arisen between the deceased and his children, growing out of his relations with respondent. We therefore decide that the respondent has not proved that she is the widow of the deceased, by virtue of a common-law marriage, even assuming that we should be obliged to hold that such a marriage, if fully proved, would be valid in this State.

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The criminal who undertakes his own defense when brought before the court rarely acquits himself creditably.—*Texas Siftings*.

Supreme Court of Pennsylvania.

FRY'S ESTATE.

1. A gave B a common bond for money borrowed. B, wishing better security after the bond was due, returned it to A, and he procured the names of X and Y, who signed the bond below his name and seal, but made no additional seals, and did not change the body of the bond, which referred only to the original signer A.
2. Held, that the instrument was not sealed as to X, and there having been no agreement to extend the time and no consideration of any kind shown to have passed to X, the amount of the bond could not be recovered from X's estate, he being dead.

Bowman v. Robb, 6 Pa., 302, distinguished.

Decided June 18, 1892.

APPEAL of P. W. Hiestand and Eveline H. Fry, executors of the will of Frederick Fry, deceased, from the decree of the Orphans' Court of Lancaster County, confirming the auditor's report rejecting the claim of said executor against the estate of John Hess, deceased.

On April 1, 1874, John Kendig borrowed from Frederick Fry \$2,000, and gave a lien for his common bond, under seal, payable one year after date. More than a year afterwards Fry became dissatisfied and requested Kendig to furnish additional security, and Kendig procured the names of Maris H. Kendig and John Hess, who wrote their names under his without adding seals, and without changing the body of the bond, and returned the bond to Fry. Interest was paid up to April 1, 1878. No interest being paid in 1879, Fry brought suit on May 30, 1879, against John Kendig, Maris H. Kendig and John Hess, and a declaration filed containing a copy of the bond. John Kendig died in May, 1879, Frederick Fry in January, 1887, and John Hess in March, 1888. Fry's executors having claimed the amount of the above obligation before L. Ellmaker, Esq., the auditor, distributing the balance in the estate of John Hess, and on the ground that there was no seal and no consideration as to John Hess, the claim was rejected by the said auditor, and the court below confirmed the report absolutely, dismissing the exceptions filed thereto. The bond having been lost, proof of it was made from the above declaration. Thereupon the said executors took this appeal, assigning for error the said action of the court.

Chief Justice PAXSON delivered the opinion of the Court:

The auditor rejected the claim of Fry's executors on the ground that the bond in question was not sealed by John Hess; and upon the further ground that there was no consideration for his assumption of any liability for John

Kendig. This ruling was sustained by the Orphans' Court, and forms the subject of the principal assignment of error.

It appears that on April 1, 1874, John Kendig borrowed from Frederick Fry \$2,000, and gave his common bond, payable one year after the date thereof. It was alleged that several years thereafter Fry became dissatisfied and returned the obligation to Kendig with the request that he be furnished with an additional security. The latter procured the names of John Hess and Maris H. Kendig, who added their names to the bond, signing below the name of John Kendig. The bond with these additional names was then returned to John Kendig. John Hess died in March, 1888. The executors of Frederick Fry appeared before the auditor appointed to make distribution of the estate of John Hess, deceased, and made claim against the same for the sum of \$2,000, as represented by the obligation above referred to.

The bond in question was the individual bond of John Kendig, with his individual signature and seal attached. There is no mention of the names of Maris H. Kendig and John Hess, the alleged sureties, in the body of the bond. Their names appear only at the bottom, and without seals.

It would be straining a point to hold that the seal attached to the name of John Kendig was the seal of the alleged sureties, or that it had been adopted by them. *Bowman v. Robb*, 6 Pa., 302, is not in point. In that case there was the written obligation of two parties, which concluded with the words, "Witness our hands and seals." There was but one seal, which was affixed to his name by the party who drew and first executed the same; and nearly opposite to this seal the other party signed his name; it was held that the obligation on its face furnished intrinsic evidence for the jury that the party last signing it had adopted the seal as it stood upon the paper. The distinction between that case and the one in hand is palpable. The instrument upon its face, with the words, "Witness our hands and seals," was certainly some evidence, and sufficient to go to the jury, of a sealing by both parties. Whereas, in the case in hand, there was nothing upon the face of the bond from which a jury would have the right to infer that John Hess had adopted the seal of John Kendig. Aside from this, the most that can be urged is, that the adoption of the seal was a question of fact to be submitted to the jury, or in this case to the auditor. It was so submitted, and it was found against the appellants. The finding was sustained by the court

below. It is an established rule that the finding of an auditor upon the facts, which has been approved by the court below, will not be disturbed on appeal, except for flagrant error. Birrow's Appeal, 26 Pa., 284; Lewis' Appeal, 127 Pa., 127. There was no such error in the present instance. On the contrary, we think the finding of the auditor fully justified by the evidence.

The only remaining question is whether there was any consideration moving from John Hess to Frederick Fry, the obligee of the bond. Upon this point we have no difficulty. The authorities are uniform that the promise to pay the debt of another, although it be in writing, is nevertheless of no force unless founded upon a consideration. It is of itself a distinct contract, and must rest upon its own consideration. Second Parsons on Contracts, 6 and 7; Cobb v. Page, 17 Pa., 649; United States v. Linn, 15 Peters, 290; Rumberger v. Golden, 99 Pa., 34. It is useless to multiply authorities upon so plain a proposition.

There was no consideration of any kind for Mr. Hess' signature. The bond was overdue, and there was no agreement to extend the time of payment. Suit could have been brought upon the bond the day after Mr. Hess signed it.

The decree is affirmed, and the appeal dismissed at the costs of the appellants.

Court of Appeals of Maryland.

OREGON R. BENSON AND JOHN A.
KNECHT

v.

JOHN I. YELLOTT AND CARROLL S.
MACGILL, TRUSTEES, &c.

No question can be raised on an appeal from an order overruling exceptions to and ratifying a sale, which goes to the regularity and validity of a decree under which the sale excepted to was made.

Decided June 7, 1892.

Justices Miller, Irving, Bryan, Robinson, McSherry, Briscoe and Fowler sitting.

Mr. Justice FOWLER delivered the opinion of the Court:

Mrs. Roberta T. Brooke, a widow, died in 1881, leaving a will duly executed, devising certain real estate in Baltimore County to trustees, "in trust and with authority to sell and convey the same, as soon as the price or sum of two hundred dollars per acre can be obtained therefor, or as soon thereafter, not exceeding one year, as in the judgment of such trustees it shall be deemed expedient, and the proceeds arising from such sale to invest in some safe security."

The testatrix directed that the income from such investment should be paid to her brother, S. Decatur Spence, during his life, and after his death said income was to go to certain other persons. On the 3d of April, 1891, the bill in this case was filed in the Circuit Court for Baltimore County by Stephen D. Spence and others against N. Carroll Spence and others for a sale of the land above mentioned.

Answers were duly filed by all the parties in being, having any interest whatever in said land, and it appears from the bill, answers and agreed statement of facts, that Mrs. Brooke, the testatrix, died without issue in August, 1881; that she left a will duly executed to pass real estate, which was duly probated. The land in question was rough and unimproved, and by reason of its roughness and isolated position, it was not valuable. For years it had yielded no income.

It appears that in 1882 a bill was filed in the Circuit Court for Baltimore County, and a decree was passed for the sale of the said land, N. Carroll Spence having been named in said decree as trustee. Having qualified as trustee, Mr. Spence made every effort to sell, but the best offer he received was less than twenty-five dollars per acre.

In 1887 he resigned as trustee, having been unable to make a sale. Subsequent to the resignation of the trustee some of the land was sold for taxes, and other portions were about to be sold for the same purpose when the bill was filed on April 3, 1891. It is conceded that in order to make the property of any value to those entitled to it, a sale is necessary, and for the interest, benefit and advantage of all the parties interested. There was no prospect of being able to get \$200 per acre for the land when the bill was filed nor for years to come, and upon the bill, answers and evidence a decree was passed for the sale of the land in question, and to set aside and vacate the bill, proceedings and decree of 1882.

Acting under the decree of 1891, the trustees therein named, sold the land to the appellants, Benson and Knecht, for \$70 per acre, agreeing to give the purchasers a marketable title. The appellants excepted to the sale. (1) Because the proper parties were not before the court. (2) Because by the terms of the will of Mrs. Brooke the property was to be sold for a price not less than two hundred dollars per acre (3) Because the decree of 1882 was not regularly and validly vacated and set aside by the decree of 1891.

The second and third exceptions go to the

regularity and validity of the decree under which the sale excepted to was made to the appellants. But it is well settled that no such question can be raised on an appeal from an order overruling exceptions to and ratifying a sale.

Newbold v. Schlens, 66 Md., 590. For if the court passing the decree has jurisdiction of the parties in interest and of the subject-matter of the suit, its decree will be binding upon all the parties concerned, those in *esse* as well as those unborn, notwithstanding any irregularity in the proceedings, until such decree be reversed or annulled. But, whether there be such irregularities or errors in the decree under which the appellants purchased, it is not material here to inquire, for, as was said in Newbold v. Schlens *ante*. "The principle is now too firmly settled to be questioned; that even if the decree could be reversed for errors or irregularities, whether in respect to evidence or otherwise, provided the court had acquired jurisdiction to pass the decree, a purchaser in good faith under the decree, while it was subsisting and binding the parties thereto, will not be affected by such reversal.

The purchaser "is bound, however, at his peril to see that all proper parties to be bound were before the court, and that he does not take a title that may be impeached *aliunde*.

But there can be no question here as to proper parties, for it is conceded that all parties in *esse* having any interest in the land are before the court, and it therefore follows that those not in *esse* are also bound by decree. Code, Vol. 1, Art. 18, Sec. 198. Newbold v. Schlens et al. *ante*.

Being of opinion, therefore, that appellants, as purchasers under the decree of 1891, will take a good and marketable title, we think their exceptions were properly overruled.

Order affirmed.

It has been a more or less mooted question in this country, whether a prisoner brought from one State to another upon requisition, can be tried for any other offense than that alleged in the requisition. Text writers have differed and the courts of some of the States have made adverse rulings upon this question. A few months ago we published the opinions of the Supreme Courts of Colorado and Ohio which came to opposite conclusions upon the question. See 34 Cent. L. J. 71. The Supreme Court of New York has lately undertaken to decide the question for that State and, in our judgment, has reached the correct conclusion. A person indicted for grand larceny under the laws of New

York was arrested in Wisconsin upon the requisition of the Governor of New York and brought to New York for trial, but was tried for robbery instead of grand larceny, the indictment upon which the requisition was issued having been quashed. On conviction, the prisoner appealed, upon the ground that, according to a recognized principle of international law, he could not be tried for any offense other than that alleged in the requisition. The court, however, held that the relations between the States of this Union under the constitution were different from those of two entirely independent sovereignties. The surrender of a person charged with crime by the authorities of one country is either an act of comity on the part of the country making the surrender, or the carrying out of a treaty obligation. As the governments of the past have been, as a rule, despotic in character, it became necessary in order to prevent the persecution of political offenders, to have it understood that when a fugitive was surrendered as an act of comity he should be tried for no other offense than that upon the ground of which his surrender was claimed, and this rule has been extended to the construction of extradition treaties. But, in the view of the Supreme Court of New York, extradition between the States of the Union is not governed by these rules. It is prescribed by the supreme law of the land, and is therefore not an act of comity, nor is the constitution to be construed as a treaty. Treaties enumerate certain specific crimes, which are few in number, while the constitution directs extradition between the States of persons charged with any crime, and it makes no difference that the offense charged is not a crime in the State from which the surrender is demanded, provided it is a crime in the State making the demand. This view seems to us to be eminently sound and indeed necessary for the strict enforcement of penal legislation.—*Central Law Journal.*

Judge (severely).—"How do you know the defendant is a married man? Were you ever at his house?"

"No, sir."

"Do you know him personally?"

"No, sir."

"Did anybody ever tell you they were married?"

"No, sir, but when I see a man and woman come to the same church regularly for three years, occupy the same pew, and have a hymn book apiece to sing out of, I don't want to see no marriage certificate. I can swear to their relation all the time."

The Interpretation of Wills.

There is no better example of the manner in which the courts have, in modern times, sought to set aside all technical difficulties in the way of making law keep pace with the changing conditions of litigants, than the principles which now prevail with respect to the construction of wills. The reports of ancient cases upon this subject frequently bristle with precedents cited as authorities governing the questions for decision. Now, however, the originally surrounding testators, their respective intentions, properties, and circumstances, is fully recognized; previous decisions, unless actually in point, are disregarded, and that construction which appears most in accordance with the intention of the testator is adopted as far as is consistent with the words of the will. In this way technicalities are avoided, broad views prevail, and full justice is done. Thus, for example, it was held in *Mannon v. Greener* (27 L. T. Rep. N. S. 408; L. Rep. 14 Eq., 456), that a devise of the income of the testator's real property passed the fee. And in the recent case of *Re Martin* (deceased); *Martin v. Martin* (noted post, p. 223), before Mr. Justice North, a further step was made in the right direction when it was decided by his Lordship, that a devise and bequest by a testator, a grocer by trade, of the rents and profits derived from his business of whatever nature or kind, passed the business with the freehold grocer's shop mentioned in the will where the business was carried on. But let not such excellent decisions encourage unqualified persons to attempt to make their own wills, since in this very case the testator, besides bringing on his family the costs of a chancery action, failed to dispose by his will of the rest of his freehold estate.—*London Law Times.*

RES JUDICATA.—Where, in a suit to recover damages for breach of contract to furnish materials for performance of a contract, defendant pleaded in bar a former recovery, the record not showing whether upon an account stated or on a *quantum meruit* basis, plaintiff's cross-examination, disclosing that he testified on the former trial about all the work he did under that contract and the prices paid, and that he was "then claiming balance due me on account of work done including all the work done under the contract," was competent, and sustains the plea in bar. *McTighe v. McLane*, (Ala.) 11 South Rep., 117.

Law Blanks at the Law Reporter, 503 E.

Supreme Court of Pennsylvania.

AYERS & CO. v. McCANDLESS, APPELLANT.

SALE—DELIVERY—CHANGE OF POSSESSION OR LOCATION OF CHATTELS.

Change of location is not necessary in all cases to constitute valid sale and delivery of chattels as against creditors. Due regard must be had to the character of the property, the nature of the transaction, the position of the parties, and the intended use of the property. *Cessna v. Nimick*, 133 Pa., 170. In this case, placing lumber in a separate pile, and marking it with the name of the vendee, was held sufficient.

Decided November 5, 1891.

APPEAL, No. 298, Oct. T., 1891, to C. P. No. 1, Allegheny Co., to review a judgment on a verdict for plaintiffs in an action of trespass for illegal sale by defendant, a sheriff, of plaintiff's property, as the property of Bauer & Bro., brought at Sept. T., 1889, No. 253.

The court, STOWE, P. J., charged *inter alia*: "If the lumber was so marked as to be visible to a person examining the lumber for the purpose of buying it, and to indicate that it belonged to somebody else than the owner of the yard, that would be sufficient." The marking was done with a carpenter's pencil on the edge of some of the boards.

The assignment of error specified, *inter alia*, this portion of the charge.

Per curiam, Jan. 4, 1892.—We are of opinion that the change of possession of the lumber in controversy was all that was reasonably necessary and practicable under the circumstances. The plaintiffs are wholesale dealers in lumber, with their place of business at East Saginaw, in the State of Michigan. The two carloads of lumber in question were sold and shipped by them to H. Bauer & Bro., of Millvale, Allegheny County. Bauer & Bro. being unable to pay for the lumber, according to the contract with the plaintiffs, the latter came on to Millvale, and, after an interview with Bauer & Bro., the contract of sale was cancelled, and the lumber re-delivered to plaintiffs. In pursuance of this arrangement, Bauer & Bro. executed and delivered to the plaintiffs the following paper: "The within bill of lumber is now piled in our yard and mill, and we hereby return the same to E. R. Ayers & Co., and we deliver up possession of said lumber to them, and agree to hold for them in our yard and mill, subject to their order."

Each pile of lumber was then marked "E. R. Ayers & Co." There was some confusion as to whether it was marked "E. R. Ayers & Co.," or "Ayers & Co.," or "This is the property of Ayers & Co.," but we do not consider this as

material, as either mark would have been sufficient to indicate that the lumber belonged to the plaintiffs. After the lumber had thus been retransferred to them, and marked as before stated, the plaintiffs returned to their place of business, in Michigan, having first arranged with a Mr. Kline to re-sell it for them.

Were the plaintiffs bound to do more than this? It would be unreasonable to hold that they must re-ship the lumber back to Michigan. They had no place of business in Pittsburgh, to which they could order it to be removed. Besides, lumber is a heavy article, and its removal from one place to another is attended with considerable expense. The plaintiffs did all that could reasonably be expected of them in having it piled separately, and the piles marked with the name of their firm. This is in harmony with our cases on this subject. In *Cessna v. Nimick*, 133 Pa. 70, it was held, that "a change of the location is not, in all cases, necessary to constitute a valid delivery of a chattel as against creditors. Due regard must be had to the character of the property, the nature of the transaction, the position of the parties, and the intended use of the property."

Judgment affirmed.—Legal Intelligencer, Feb. 26, 1892.

SCHOOLS—Power of Trustees.—Where the principal of a normal school was legally employed and allowed to serve a portion of the school year without objection, he cannot be regularly discharged by the board of trustees for immoral conduct, without a hearing. *Trustees of State Normal School v. Cooper*, (Pa.) 24 Atl. Rep., 348.

A SOLICITOR's lien for costs will take precedence of the lien of mortgage debentures previously made and conditioned to rank pari passu as a first charge and to be a floating security, but so that the company should not be at liberty to create any mortgage or charge in priority to them and charged upon all the property of the company, but not secured by any further trust deed. *Brunton v. Electrical Engineering Corp.* (1892) 1 Ch., 434.

A STATUTE providing that an attorney's lien upon a decision in his client's favor cannot be affected by any settlement between the parties does not authorize the court to set aside a release and settlement in an action, on motion of the attorney, unless it appears that it will operate to the prejudice of the attorney by depriving him of his costs or turning him over to an irresponsible client. *Poole v. Belcha*, 42 N. Y. S. R., 856, 30 N. E., 53.

TRADE MARKS.—Numerous as the decisions have been on the subject of common-law trade marks, some confusion as to the rights of traders in respect of them apparently still exists. The case of *Reddaway & Co. v. The Bentham Hemp-Spinning Company (Lim.)*, which came recently before the Court of Appeal (Lindley, L. J., Lopes, L. J., and Smith, L. J.), on an application for a new trial, affords a good illustration of this. It seems desirable, therefore, to draw attention to the statement of the law which was laid down in that case in a considered judgment of the court. We quote the words of Lord Justice Lopes as most clearly expounding the view of their lordships. The learned judge observed that: "If a person sells his goods with the intention of deceiving purchasers, or inducing them to believe his goods are the goods of another, this is actionable, and entitles the latter to recover nominal damages, even though no special damage is proved. If an article has acquired a distinctive meaning in the trade, connecting it with a particular person's manufacture, and another so advertises, or describes, or makes up his goods as to lead purchasers to believe, or to create a probability of their believing, that they are buying the goods of the former; when in fact they are buying the goods of the latter (and this though there is no intention to deceive and no special damage proved), a court of equity will grant relief by way of injunction. The fraudulent intention is essential in the first case; it is unnecessary in the second." See *Rodgers v. Nowill*, 17 Law J. Rep. C. P., 52; 5 C. B. 109; *Millington v. Fox*, 3 My. & Cr., 338, 352; and *Johnston & Co. v. Orr-Ewing & Co.*, 51 Law J. Rep. Chanc., 797; L. R. 7 App. Cas., 219.—*Law Journal, London*.

THE COURTS.

Supreme Court of the District of Columbia.

IN EQUITY.—New Suits.

August 16, 1892.

14123. Fannie Redman, alleged lunatic. Upon petition of Commissioners D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazelton.

14124. Henry Raff, alleged lunatic. Upon petition of Annie B. Raff. Com. sol., C. Carrington.

14125. Margaretta P. Norris, alleged lunatic. Upon petition of S. P. Norris. Com. sol., Jno. B. Larner.

August 17.

14126. Charles N. Moore v. Anne Wicks et al. To establish and quiet title. Com. sols., Ralston & Siddons.

14127. Arthur C. Yates et al. v. Jno. T. Doyle. To rescind contract, and for injunction. Com. sol., Edward L. Gies.

14128. Sarah G. Crowe v. Louis H. Crowe. For divorce. Com. sols., Ralston & Siddons.

August 19.

14129. Walter F. Hewett v. Evan Lyons et al. For specific performance. Com. sol., Frank T. Browning.

14130. Martin McDermott v. Louis P. Spinner et ux. et al. For injunction, receiver, and re-conveyance. Com. sols., Sheppard & Lavender; Defts. sol., W. S. Flippin.

August 20.

14131. Mary T. Field v. F. F. Field. For divorce. Com. sol., H. B. Moulton.

August 22.

14132. W. E. Jones v. D. W. Taulman et al. For partition by sale. Com. sol., E. H. Thomas.

14133. W. E. Brown, Jr., v. Geo. W. Brown et al. For account and execution of trust. Com. sols., Lipcomb & Woodard.

14134. W. Thompson v. Elizabeth Davis et al. For conveyance. Com. sol., J. J. Johnson.

14135. W. A. H. Turner v. Lillie Turner. For divorce. Com. sol., Geo. W. Rea.

14136. —

August 25.

14137. Margaret Craig v. Sophia Carroll. For injunction. Com. sol., J. H. Smith.

14138. Sarah McC. Spofford v. Alex. W. Coulee et al. Com. sol. Jas. Fullerton.

August 26.

14139. Wm. H. Claggett v. Jno. F. Beale et al. To release part Lot 9, Square 427, from trust. Liber R. M. H. 11, fol. 379. Com. sol., Chapin Brown.

14140. J. E. Willett v. Mary E. Wilson et al. To sell part of "Friendship," near Tennytown. Com. sol., Chapin Brown.

August 27.

14141. James S. Gilliss, Exr., v. Fannie Gillis et al. To construe will. Com. sol., R. Hagner.

14142. Beesie Taylor v. Geo. O. Taylor. For divorce. Com. sols., A. B. Webb and S. B. Truitt.

AT LAW—New Suits.

July 29, 1892.

33159. James McDermott v. The District of Columbia. Damages, \$5,000. Pliffs. attys., J. A. Butler, Jr., and W. A. Johnston.

33160. Jno. McDermott & Bro. v. The District of Columbia. Damages, \$15,000. Pliffs. attys., J. A. Butler, Jr., and W. A. Johnston.

33161. E. M. Ricker v. The District of Columbia and The Treasurer of the United States of America. Certiorari. Pliffs. attys., Birney & Birney.

33162. D. W. Jarboe v. The District of Columbia and The Treasurer of the United States of America. Certiorari. Pliffs. attys., Birney & Birney.

33163. Bertha W. Solomon v. The District of Columbia and The Treasurer of the United States of America. Certiorari. Pliffs. atty., Birney & Birney.

July 30.

33164. Bendiza J. Behrend, as "B. J. Behrend & Son," v. Thompson, Foust & Co. and Riggs & Co. Damages, \$25,000. Pliffs. atty., L. Tobriner.

33165. B. J. Behrend & Co. v. Jas. Robertson and T. E. Young. Damages, \$25,000. Pliffs. atty., Leon Tobriner.

33166. B. J. Behrend & Co. v. C. F. Boulter et al. Damages, \$25,000. Pliffs. atty., Leon Tobriner.

33167. B. J. Behrend & Co., v. Samuel Whittle et al. Damages, \$25,000. Pliffs. atty., Leon Tobriner.

33168. James McCreecy et al. v. Katharine Chase. Note, \$148.82. Pliffs. attys., Taylor & Payne.

August 1.

33179. The Veigt Manufacturing Jewelry Co. of the District of Columbia v. Carl Kattelmann. Damages, \$10,000. Pliffs. atty., F. T. Browning.

33170. Joseph Bergmann v. C. F. Sigourney. Note, \$300. Pliffs. atty., Leon Tobriner.

33171. Joseph Bergmann v. Thos. A. Goodman. Check, \$125. Pliffs. atty., Leon Tobriner.

August 3.

33172. The National Capital Brewing Co. v. Neitzey Bros. Judgment of Justice Walter, \$91.40.

33173. The National Capital Brewing Co. v. Thos. J. Murdock. Judgment of Justice Walter, \$92.37.

33174. The National Capital Brewing Co. v. Jno. Shehan. Judgment of Justice Walter, \$43.15.

33175. The National Capital Brewing Co. v. Henry Meyers. Judgment of Justice Walter, \$54.25.

33176. The National Capital Brewing Co. v. Milo Sweeny. Judgment of Justice Walter, \$76.50.

August 4.

33177. Chas. E. Ganse v. The Industrial Banking and Investment Co. of the United States of America. Account, \$500. Pliffs. atty., C. A. Brandenburg.

33178. Esther A. Keyser v. The District of Columbia. Certiorari. Pliffs. attys., Birney & Birney.

33179. E. A. Newman and Chapin Brown, receivers in equity, v. The District of Columbia and the Treasurer of the United States of America. Certiorari. Pliffs. attys., Birney & Birney.

33180. Sidney Henning v. Geo. A. Armstrong et al. Damages, \$3,000. Pliffs. attys., F. H. Mackey and C. C. Tucker; Defts. atty., J. McD. Carrington.

August 5.

33181. C. H. Raub et al. v. R. C. Holtzman. Account \$103.61. Pliffs. atty., C. A. Brandenburg.

33182. The Clifton Forge Co. v. Myers & Loving. Account, \$480. Pliffs. attys., Church & Stephens.

August 6.

33183. The Richmond v. Horace M. Cake. Account, \$2,375. Pliffs. atty., Wm. F. Mattingly.

33184. Sebastiano Mencacci v. Louis Amateia. Account, \$94. Pliffs. attys., H. W. Garnett and D. S. Mackall.

33185. Chas. F. Bagby v. Moses Coleman, Jr.
Account, \$172.25. Plffs. attys., H. W. Garnett
and D. S. Mackall.

August 8.

33186. Geo. B. Christie et al. v. The Bright-
wood Railway Co. of the District of Columbia.
Account, \$8,623.96. Plffs. atty., R. Ross Perry.

33187. John T. Hoge v. The Baltimore and Po-
tomac Railroad Co. Damages, \$1,600. Plffs.
attys., Lipscomb & Woodard.

33188. Maurice F. Talty v. John T. Belt. Judg-
ment, \$85.40. Plffs atty., L. C. Williamson.

August 9.

33189. Louis W. Shoemaker et al., Trustees of
the First Methodist Protestant Church, v. The
District of Columbia. Certiorari. Plffs. atty.,
T. A. Lambert.

•••

TELEPHONE COMPANIES—Common Carriers.—Telephone companies are subject to the rules governing common carriers, and are bound to furnish equal facilities to all persons or corporations belonging to the classes which they undertake to serve. *Delaware & A. Telegraph & Telephone Co. v. State of Delaware, U. S. C. O. of App.*, 50 Fed. Rep., 677.

Legal Notices.

Rule of Court.

RULE 20. * * * * Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

FIRST INSERTION.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphan's Court business, letters of administration on the personal estate of GEORGE PAGE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of August, 1892.

L. C. BAILEY,

35 Jas. H. Smith, Proctor. 1406 15th St. n. w.
No. 5111. Admn. Doc. 18.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, Holding a Special Term for Orphans' Court Business,

August 26, 1892.

In the case of William J. Miller, administrator c.t.a. of WASHINGTON C. MILBURN, deceased, the administrator c.t.a. aforesaid has with the approval of the court, appointed Friday, the 22d day of September, A. D. 1892, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the administrator c.t.a. will take the benefit of the law against them.

Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star previous to the said day.

Test: L. P. WRIGHT,

Register of Wills for the District of Columbia.
35 No. 4578. Ad. D. 17. Carusi & Miller, Proctors.

Legal Notices.

This is to Give Notice

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court Business, letters of administration on the personal estate of CHARLES NEALE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of August, 1892.
JAS. F. HOOD,
35 No. 5113. Admn. Doc. 18. Pacific Building, 522 F St.

This is to Give Notice

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of VIRGINIA C. MILLER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of July, 1892.
VIRGINIA MILLER,
R. Ross Perry, Proctor. 1005 New Hampshire Ave.
35 No. 5051. Ad. Doc. 18.

This is to Give Notice

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court Business, letters testamentary on the personal estate of GEORGE F. WISWELL, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of August, 1892.
MARY ELLA WISWELL,
S. Herbert Giesy, Proctor. ALBERT C. PEALE.
35 No. 5101. Ad. Doc. 18. U. S. Geological Survey.

This is to Give Notice

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of LOUISA CATHARINE GONZENBACH, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 22d day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of August, 1892.
LOUISE BOWDLER,
Judson T. Cull, Proctor. 17th and H Sts., n. e.
35 No. 5119. Ad. Doc. 18.

SECOND INSERTION.

This is to Give Notice

That the subscribers of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of WILLIAM B. MOSES, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 24th day of June, 1892.
WILLIAM H. MOSES,
HARRY C. MOSES,
ARTHUR C. MOSES.

34 E. B. Hay and Cole & Cole, Proctors.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of RICHARD GUNDLACH, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of August, 1892.

EDWARD KOLB,
811 E St. n. w., city.

34 No. 5082. Ad. D. 18. B. W. Lacy, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

This 19th day of August, 1892.

In re estate of MARY ALICE MAGRUDER DOWNMAN, late of Georgetown, D.C. No. 5145. Ad. D. 18.

Application having been made for the probate of a paper-writing propounded as the last will and testament, and for letters testamentary on the estate of said Mary Alice Magruder Downman, deceased, by Cynthia R. Downman:

Notice is hereby given to all concerned to appear in this court on Friday, Sept. 16th, 1892, at 11 o'clock a. m., to show cause, if any exist, against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter and Evening Star once in each of three successive weeks before said day.

By the Court. CHARLES P. JAMES, Justice.
A true copy. Teste. L. P. WRIGHT, Reg. of Wills, D.C.
34 Gordon & Gordon, Proctors for applicant.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of JOHN T. C. CLARK, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of July, 1892.

GEO. W. WISE,
2900 M St. n. w.

34

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of MARY A. GALT, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of August, 1892.

34 H. E. Davis, Proctor.
HENRY E. DAVIS,
Fendall Building.

THIRD INSERTION.**This is to Give Notice**

That the subscriber, of District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of ANNA E. WORMLEY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 11th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 11th day of August, 1892.

W. H. A. WORMLEY,
Park St., Mt. Pleasant.

38 No. 5118. Ad. D. 18. Wm. H. Dennis, Proctor.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of JULIA LIESMANN, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of August, 1892.

CHARLES LIESMANN,

38 John A. Barthel, Proctor.
IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business.

August 11th, 1892.

In the case of Joseph Packard, Jr., administrator c. t. a. of WALTER JONES, deceased, the administrator aforesaid has, with the approval of the court, appointed Friday, the 9th day of September, A.D. 1892, at 12 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Washington Post previous to the said day.

Test : L. P. WRIGHT,
Register of Wills for the District of Columbia.
38 No. 116. Ad. D. 8.

This is to Give Notice

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of JAMES THOMPSON, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of August, 1892.

CHAPIN BROWN,
323 4½ St. n. w.,
Washington, D.C.

38 No. 5091. Ad. D. 18.

This is to Give Notice

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of HENRY D. BOTELER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of August, 1892.

CHAPIN BROWN,
323 4½ St. n. w.,
Washington, D.C.

38 No. 5112. Ad. D. 18.
IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business.

August 13, 1892.

In the case of Warren I. Collamer, administrator c. t. a. of PHILIP THOMAS, deceased, the administrator aforesaid has, with the approval of the court, appointed Friday, the 16th day of September, A.D. 1892, at 11 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the administrator c. t. a. will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test : L. P. WRIGHT,
Register of Wills for the District of Columbia.
38 No. 5317. Ad. D. 14.

The Washington Law Reporter.

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[WEEKLY]

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WASHINGTON, D. C., - - - SEPTEMBER 8, 1892

Republished.

The opinion of the court as originally delivered in General Term, in the case of The Union River Logging Railroad Company v. John W. Noble, Secretary of the Interior, and Thomas H. Carter, Commissioner of the General Land Office, was published in THE LAW REPORTER (Vol. XX, No. 23), June, 9, 1892.

Subsequent to that publication Mr. Justice James prepared a revised or reconstructed opinion in the case without changing the result. We publish the revised opinion in this number of THE LAW REPORTER.

TAXATION—Redemption from Forfeiture.—A son-in-law of an owner of lands forfeited for non-payment of taxes is not one of the class allowed to redeem under Gen. St., Sec. 307, directing that such lands shall become a charge upon the sinking fund commission, to be sold, etc., provided that before sale the owner thereof, "or those claiming under or through such owner, or others having a legal and equitable interest therein, shall have the right to redeem."—*Dixon v. Hockady, S. Car.*, 15 S. E. Rep., 342.

TELEGRAPH COMPANIES—Delay.—The fact that a telegraph company, which has undertaken the delivery of a death message, is not informed, either by the contents of the message or otherwise, what action the addressee expects to take with reference to being present at the funeral, does not relieve the company from liability for delay in the delivery of the message. *West. U. Tel. Co. v. Ward, Tex.*, 19 S. W. R., 898.

Supreme Court of the District of Columbia. IN GENERAL TERM.

THE UNION RIVER LOGGING RAIL- ROAD COMPANY

v.

JOHN W. NOBLE, SECRETARY OF THE IN-
TERIOR, AND THOMAS H. CARTER, COM-
MISSIONER OF THE GENERAL LAND OFFICE.

1. The Act of Congress of March 3, 1875, (18 Stat., 482) provides for granting the right of way through the public lands of the United States, to any railroad company duly organized under the laws of any State or Territory, etc., and prescribes the necessary proceedings for obtaining the approval of the Secretary of the Interior to the location of the railroad.
2. The Act of March 3, 1875, in granting right of way through the public lands, used the word "railroads" in its ordinary sense. It was intended to apply only to roads which serve a public use, in other words to common carrier roads.
3. Whenever an application for the necessary approval of its map of location is made by a company already carrying on business, the very first duty which the statute imposes on the Secretary of the Interior is that he shall ascertain whether the applicant is a railroad company within the meaning of the act, that is whether its road is for public or only for private use.
4. When the railroad company has obtained the approval of the Secretary, and has proceeded to the construction of its road, it is the intention of the Act of Congress that, so far as executive inquiry is concerned, the Secretary's approval shall stand as decision. The function of executive inquiry under this statute ceases when a railroad company has obtained approval of its location of route and has upon that authority expended moneys in building its road.
5. The right of way conceded under this statute is a right in the most absolute sense—a property right as perfect as that which is acquired by purchase of the soil under the public land laws.
6. The Secretary of the Interior acts as a special tribunal to determine all the facts which must be considered before he approves a map of location, and in all cases the "qualifications of the applicant" to acquire a right of way.
7. If in fact an approval is obtained by a company not qualified according to the statute to have a right of way, its legal title is liable to annulment, but only by judicial proceedings instituted for that purpose.

In Equity. No. 18,503. Decided May 23, 1892.

The CHIEF JUSTICE and Justices COX and JAMES
sitting.

Mr. F. D. MCKENNEY, for complainant.

Mr. WM. A. MAURY, Assistant Attorney
General, for respondents.Mr. Justice JAMES delivered the opinion of
the Court:

This a bill to restrain the Secretary of the Interior and the Commissioner of the General Land Office from molesting the complainant's right of way through certain lands of the United States granted to it under the Act of March 3, 1875, 18 Stat., 482.

The first section of that act provides: "That the right of way through the public lands of the United States is hereby granted to any railroad company duly organized under the laws of any State or Territory, except the District of Columbia, or by the Congress of the United States, which shall have filed with the Secretary of the Interior a copy of its articles of incorporation, and due proofs of its organization under the same, to the extent of one hundred feet on each side of the central line of the said road; also the right to take from the lands adjacent to the line of said road material, earth, stone and timber necessary for the construction of said railroad; also ground adjacent to such right of way for station buildings, depots, machine shops, side tracks, turnouts, and water stations, not to exceed in amount twenty acres for each station, to the extent of one station for each ten miles of its road."

The fourth section provides: "That any railroad company desiring to secure the benefits of this act shall, within twelve months after the location of any section of twenty miles of its road, if the same be upon surveyed lands, and, if upon unsurveyed lands, within twelve months after the survey thereof by the United States, file with the register of the land office for the district where such land is located a profile of its road; and upon approval thereof by the Secretary of the Interior the same shall be noted upon the plats in said office; and thereafter all such lands over which such right of way shall pass shall be disposed of subject to such right of way: *Provided*, that if any section of said road shall not be completed within five years after the location of said section, the rights herein granted shall be forfeited as to any such uncompleted section of said road."

The bill states substantially the following case, as showing compliance with these requirements and the vesting in complainant of a right of way.

The code of the Territory of Washington, adopted in 1881, provided the manner in which companies for the purpose of building and running railroads, should be incorporated and organized. In 1883 certain persons organized, in accordance with these provisions, a company called "The Union River Logging Railroad Company," whose business and objects, as stated in the articles, were to be "the building, running, etc., a railroad for the transportation of saw logs, piles, and other timber and wood and lumber, and to charge and receive compensation and tolls therefor." The

route of this road was from tidewater in Lynch's Cove, at the head of Hood's Canal, to a point at or near the northeast corner of township 24 north of range 1 east, of the Willamette meridian. The company proceeded to construct and equip a railroad extending some four miles from Lynch's Cove, and to transport over it saw logs and other timber.

On the 29th of December, 1885, certain other persons purchased from its then stockholders the whole of the capital stock of the company and took control of its franchises, property and business. Afterwards, on the 17th of August, 1888, these new stockholders, in pursuance of authority granted by the Act of 1881, filed supplemental articles of incorporation as follows:

"First. To construct and equip a railroad and telegraph line from a convenient point on tidewater on Lynch's Cove, at the head of Hood's Canal, in Mason County, Washington Territory, and running thence in a general northeasterly direction by the most practicable route to a convenient point on tidewater on Dye's Inlet, in the county of Kitsap, in said Territory; and also a branch from said line, at some convenient point thereon between Lynch's Cove and Dye's Inlet, and running thence in a general northerly direction, by the most practicable route to or near the town of Seabeck on Hood's Canal, in said county of Kitsap; and also a branch from some convenient point on the line of said road between said Lynch's Cove and Dye's Inlet, and running in a general northeasterly direction, by the most practicable route, to tidewater at or near Port Orchard, in said county of Kitsap; and also to construct and equip such other branches to said railroad and telegraph line as may be necessary for the proper and profitable management or extension of the business of said corporation.

"Second. To maintain and operate said railroad and branches and *carry freight and passengers thereon and receive tolls therefor.*"

* * * * *

In the autumn of 1888, after the filing of these supplementary articles of incorporation, plaintiff's attention was called to the fact that the Act of Congress above referred to required that any railroad company which should propose to avail itself of the right of way and other privileges granted by that act, should previously file with the Secretary of the Interior a copy of its articles of incorporation, together with due proofs of its organization. Thereupon, on the 5th of January, 1889, it filed with the register of the land office at Seattle the following papers, duly certified and sworn to, namely,

a copy of its articles of incorporation; a copy of the territorial law under which the company was organized; a certificate of the Secretary of the Territory that the articles of incorporation had been so filed in his office, with the date thereof; an official certificate by the secretary of the company of its organization and of the copy of the articles filed with the Secretary of the Interior; a true list of the names and designations of its officers at that date, and a map showing the termini of the road, its length, and its route over the public lands according to the public surveys. This was done in accordance with the directions of a circular for that purpose issued by the Secretary of the Interior on the 7th of November, 1879.

On the 10th of January, 1889, the register at Seattle transmitted these papers to the Commissioner of the General Land Office, and he in turn, on the 28th of the same month, transmitted them to the Secretary of the Interior, at the same time approving them and recommending that they be received and placed on file. On the 29th of the same month they were approved in writing by the Secretary of the Interior—at that time William F. Vilas, Esq.—and were ordered to be filed. They were accordingly so filed, and the plaintiff was notified thereof.

Afterwards, in the spring of the year, the plaintiff constructed its line for three miles beyond the point to which it had previously extended, located at intervals a better line of road, made and ballasted a new road bed of standard gauge, and substituted steel rails and another locomotive for the rails and equipments which had suffered for the limited purposes specified in its original articles of incorporation.

On the 13th of June, 1890, a copy of an order by John W. Noble, Esq., Secretary of the Interior, was served upon the plaintiff, directing it to show cause why the above "approval of its articles of incorporation and maps of definite location should not be revoked and annulled." Thereupon the plaintiff, protesting at the same time that such revocation and annulment was beyond the power of the Secretary, did show cause as directed; but, nevertheless, on the 2d of June, 1889, George Chandler, Esq., then the acting Secretary of the Interior, made the rule to show cause absolute, and ordered "that the approval of the Secretary of the Interior, dated the 29th of January, 1889, of the maps of definite location or profile of the Union River Logging Railroad Company be, and the same is hereby annulled, cancelled, set

aside, and held for naught," and directed the Commissioner of the General Land Office "to carry out this order by causing it to be entered upon the appropriate plats and records of his office and the proper local land office."

The bill avers that the defendants are about to carry out this order, and prays that it may itself be declared void, and that the defendants may be enjoined not to molest the plaintiff's enjoyment of the right of way and of the privileges secured to it by the approval and order of 29th January, 1889.

The joint answer of the defendants admits the truth of the allegations above set forth in substance, and then proceeds as follows:

"As to the remaining paragraphs of the bill, these respondents say that it became known to them that the complainant company was not engaged in the business of a common carrier of passengers and freight at the time of its application for admission to the privileges of the Act of Congress of March 3, 1875, Chap. 152, but that it was engaged at the time in the transportation of logs for the private use and benefit of the several persons composing the said company; and thereupon your respondent, John W. Noble, Secretary of the Interior, being advised that a railroad company carrying on a merely private business was not such a railroad company as is contemplated by the said act of Congress, deemed it his duty to take proper steps to vacate and annul the action of the Honorable W. F. Vilas, Secretary of the Interior, of January 29, 1889, approving the application of the complainant company under the said act of Congress, and the maps of definite location accompanying the same; and to that end this respondent caused notice to be given to the complainant company to show cause why the said action of the Secretary of the Interior should not be vacated and annulled."

Secretary Noble states that he had approved the order of Acting Secretary Chandler annulling the action of Secretary Vilas, and had directed the Commissioner to carry into effect such annulling order. He further states that he was advised that he had the right to revoke the action of his predecessor as having been done improvidently and on false suggestions and without authority under the said statute.

It further appears by the answer that an application for a rehearing had been filed with it and is now pending and undecided.

Some statements or rather suggestions of facts were made at the argument to which we have not thought it proper to allude. As this case was submitted on the bill and answer and ac-

companying exhibits we know only what is there shown; and it is because the facts appear only in this way that we have stated the contents of the pleadings at such length. The question to be considered by us is, whether the facts thus shown entitle the complainant to an injunction.

In that inquiry the particular questions are: first, what matters were to be considered by the Secretary of the Interior when the complainant submitted its application for a right of way; second, what was the effect of his action in approving that application; third, what was the power of his successor if the latter should be of opinion that the original approval had been made improvidently or upon false suggestions or representations?

In the first place, the Act of March 3, 1875, in granting right of way through the public lands, used the word "railroads" in its ordinary sense. It was intended to apply only to roads which serve a public use; in other words to common carrier roads. Whenever an application for the necessary approval of its map of location is made by a company already carrying on business the very first duty which the statute imposes on the Secretary of the Interior is that he shall ascertain whether the applicant is a railroad company within the meaning of the act; that is, whether its road is for public or only for private use. Indeed the respondent's own attitude is that such an inquiry is part of the Secretary's business: He himself is asserting that the Secretary of the Interior is competent to ascertain, and is charged to ascertain, whether an applicant was, at the time of its application, in good faith a railroad within the meaning of the statute. The very assertion of power relating to that matter which respondent now makes, is a contention that this is an inquiry which it is the duty of a Secretary of the Interior to institute, and that is a concession that Secretary Vilas had the same power and was charged with the same duty. It is not, however, to any *argumentum ad hominem*, that we give weight. The statute plainly made it the duty of Secretary Vilas to ascertain the validity of complainant's pretensions, and whether it was competent to acquire rights under the statute.

What effect did the statute intend to give to this inquiry and ascertainment? Was it intended that there should be no time at which executive action should become conclusive? The applicant is invited and authorized by the statute to proceed at once with the construction of its road on obtaining approval of its location.

When such steps are actually taken in consequence of such approval it would seem to be the intention of the legislature that, so far as executive inquiry is concerned, the Secretary's approval shall stand as a *decision*. It is not conceivable that the same law which authorizes a railroad company to build its road on obtaining the Secretary's approval of its location, should contemplate further inquiry by him into its right to do so after it has built its road. We conceive, then that the function of executive inquiry under this statute ceases when a railroad company has obtained approval of its location of route and has upon that authority expended moneys in building its road. The executive determination of its status and qualification to be a grantee of right of way stands then as an authorized executive *decision*; a decision which is conclusive against executive interference.

Next, what is the nature of the right acquired by a railroad company?

We observed at the argument that counsel for the respondent characterized it as a "privilege," as if it were some kind of sufferance or revocable gratuity, and thus differed essentially from a property right. It is enough, perhaps, that the statute calls it "a right of way." In the absence of any indication of a different meaning, we perceive no reason to suppose that these words have less than their usual force. A right of way means a property right, and there is not only no reason to suppose that it means less in this statute, but there is reason for a contrary acceptance. These concessions have in view the earlier settlement of the public lands. They are made for the public welfare, and anything less than a complete and permanent grant of a property right would be inconsistent with the objects as well as with the words of the statute. Still more would any uncertain "privilege" or sufferance be inconsistent with an invitation to expend moneys in constructing railroads. We conceive that it is plain, then, that the right of way conceded under this statute is a *right* in the most absolute sense; a property right as perfect as that which is acquired by purchase of the soil under the public land laws.

The same principles apply, then, in this case which have been applied by the Supreme Court to patents conveying public lands. They apply, in the first place, in ascertaining the nature and scope of the Secretary's action in approving a map of location, and, in the second, in determining whether there is any executive power to interfere after *title* has vested in the railroad.

In *Steel v. Smelting Company*, 108 U. S., 447

(451), the Supreme Court held that the officers of the Land Department acted as a special tribunal for the decision of all matters which must be decided before issuing a land patent, and that such decisions were, for executive purposes, conclusive. In that case the ground taken was, that a patent was void because it had been obtained by "fraud, bribery, perjury, and subordination of perjury." The court, speaking of the Land Department, said that: "Necessarily it must consider and pass upon the qualifications of the applicant, the acts he has performed to secure the title, the nature of the land, and whether it is of the class which is open to sale. Its judgment upon these matters is that of a special tribunal, and is unassailable except by direct proceedings for its annulment or limitation." It is especially pertinent to the present inquiry that the court held that executive power could not annul action which had caused title to pass, on the ground that it had been obtained by fraud.

In *Johnson v. Towsley*, 13 Wall., 73 (85), Mr. Justice Miller, speaking for the court declared it to be "the general doctrine that when the law confided to a special tribunal the authority to hear and determine certain matters arising in the course of its duties, the decision of that tribunal within the scope of its authority is conclusive upon all others. That the action of the Land Office in issuing a patent for any of the public lands subject to sale, by pre-emption or otherwise, is conclusive of the legal title, must be admitted under the principle above stated; and in all courts and in all forms of judicial proceedings where this title must control, either by the limited powers of the court or of the essential character of the proceedings, no inquiry can be permitted into the circumstances under which it was obtained."

According to these decisions, the Secretary of the Interior acts as a special tribunal to determine all the facts which must be considered before he approves a map of location; and in all cases the "qualifications of the applicant" to acquire a right of way—in other words, the fact that it is a railroad within the meaning of the statute, is one of these facts. And according to these same decisions, when an affirmative decision is made and the map of location is approved, the legal title to a right of way vests at once by operation of the statute. We can perceive no difference in this respect between the action of the Land Department in executing a patent whereby it directly conveys the title and the action of the Secretary whereby the statute is caused to vest title. In both

cases title is passed by means of executive determination and action. And it vests, as the Supreme Court has held in the cases referred to, even if executive action be obtained by fraudulent misrepresentation. From that time it must be treated as a legal title. "In all courts, and in all forms of judicial proceedings where this title must control, either by reason of the limited powers of the court or of the essential character of the proceeding, no inquiry can be permitted into the circumstances under which it was obtained." *A nulte fortiori* must it be conclusive against all subsequent executive inquiry.

If in fact an approval of location is obtained by an applicant not qualified according to the statute to have a right of way, its legal title is undoubtedly liable to annulment; but until annulled it must be regarded as property, and the holder can be deprived of it only by due process of law. It is hardly necessary to demonstrate that, in such matters as this, due process is by judicial proceedings instituted in a court of competent jurisdiction for the purpose of a direct annulment of the title.

It can hardly be maintained that executive power is larger in this case than in the case of a patent, on the ground that an entry of approval of location is merely an office record. It may be an office record, of which only the Land Department shall have custody, but it is not merely that. The statute makes that record an element of the title; it is thereby one of the muniments of title, and the owner of the right of way has an interest in its existence and preservation. In so far as it is a muniment of title it is subject to no larger executive control or disposal than a patent conveying lands would be.

The question of relief remains to be considered. When a public officer assumes powers over property which do not belong to him, and infringes upon or violates the rights of a citizen under pretense of such assumed authority, equity has jurisdiction to interfere by injunction. Keer on Injunc., Sec. 1309. The annulment of the former approval of complainant's location must have the effect to impair its peaceful enjoyment of its right of way, and to expose it to trespasses and interruptions. We conceive that it is not necessary that these interruptions should proceed immediately from the respondent. Apart from such trespasses, the impairment of the complainant's muniment of title is itself an injury which is a proper subject of restraint.

We observe that the answer of Secretary

Noble states that complainant's motion for a rehearing is still pending and undecided. This may be a suggestion that the respondent cannot now be supposed to threaten to carry out the order complained of; but on the other hand the answer admits the allegations contained in the first seventeen paragraphs of the bill, and one of these is an averment that the respondents are about to carry out that order. Besides, we find the respondent insisting upon his right and duty to do so, and must therefore understand that he will do so unless restrained.

An order of injunction may be prepared according to this opinion.

Supreme Court of Ohio.

LESTER v. BUEL.

CONTRACTS—GAMBLING—OPTION DEALINGS—RECOVERY OF AMOUNT LOST.

1. A contract whereby one of the parties is to have the option to buy or sell at a future time a certain commodity, on the understanding or both that there is to be no delivery of the commodity, the party losing to pay to the other the difference in the market price simply, is by common law, as well as by statute, in this State (Sec. 6934a, Rev. Stat., as adopted April 15, 1882) a "gambling contract" or wager upon the future price of the commodity, and therefore void.
2. Where the purchase or sale of a commodity is adopted as a mode of disguising a wager upon the market price of the commodity at a future time, the fact that one of the parties assumes to make the purchase or sale as a commission merchant only will not alter the relation in which they stand as parties to the wager. Each is in law *particeps criminis* to the wager, and either may, as loser, recover from the other as a "winner," under the provisions of section 4270, Revised Statutes.

Decided, March 22, 1892.

Mr. Justice MINSHALL decided the opinion of the Court:

Two questions arise upon this record. The first relates to the right of the plaintiff to recover upon his petition, and the second relates to the right of the defendants to recover upon their counter-claim, although the plaintiff may have no right to recover upon his petition; in other words, whether the purchases and sales of grain on which the plaintiff has charged and seeks to recover commissions were wagers upon the future price of the commodities bought and sold; and if so, whether under the statutes of this State, the defendants may recover from him the amount claimed, as the "winner" of the money so "lost" and paid to him. Though all the evidence is set forth in a bill of exceptions, it is not the province of this court to consider it for the purpose of determining whether

the finding of the jury is right as a matter of fact. If the evidence was submitted to the jury under proper instructions, we must accept its finding as an affirmation of the claim of the defendants as to the character of the alleged purchases and sales of grain, on which the plaintiff seeks to recover the commissions charged in the account on which he has brought his suit. It is well settled that purchases or sales of commodities of any kind for future delivery are valid, although the seller may not own the commodity at the time the contract is made, and will have no other means of performing than by going into the market and making the requisite purchase when the time for delivery arrives. "But such a contract is only valid when the parties really intend and agree that the goods are to be delivered by the seller and the price to be paid by the buyer; and if under the guise of such a contract, the real intent be merely to speculate in the rise or fall of prices, and the goods are not to be delivered, but one party is to pay to the other the difference between the contract price and the market price of the goods at the date fixed for executing the contract, then the whole transaction constitutes nothing more than a wager, and is null and void." Benj. Sales, Sec. 542.

This is so well settled that we think it unnecessary to do more than refer to a few of the leading cases on the subject: Irwin v. Williar, 110 U. S., 499, 508, 510; Embrey v. Jemison, 131 id., 336, 334; Bigelow v. Benedict, 70 N. Y. 202, 206; Kahn v. Walton, 46 Ohio St., 195, 215. In this State, by an act adopted April 15, 1882, and embodied in section 6934a, Revised Statutes, such contracts are declared to be "gambling contracts," and the parties making them liable to fine and imprisonment. Its language, applicable to this case, is: "Whoever contracts to have or give to himself or another the option to sell or buy, at a future time, any grain or other commodity, * * * where the intent of the parties thereto is that there shall not be a delivery of the commodity sold, but only a payment of differences by the parties losing upon the rise or fall of the market," shall be fined and imprisoned, and the contracts so made "shall be considered gambling contracts, and shall be void." So that in this State the character of such contracts rests not merely upon judicial decision, but also upon statute, and there is no room for question as to what the law is in such cases. Many of the other States have similar statutes. And indeed, Mr. Bishop says: "By common consent, all bargains for the purchase and sale of things—for example, stocks

and commodities—where it is the understanding of the parties, whether expressed or not, that the things are not to be delivered, but at the agreed time the ‘difference’ between the market values at the two periods are to be adjusted, and all other transactions of this nature, are illegal or against public policy, to the extent that courts will not enforce them. These are all gambling contracts, disturbing the course of trade, and not tolerated by law. But,” he adds, “a sale in good faith, for future actual delivery, is valid, even though at the time of the sale the seller has not the article in his possession.” Bish. Cont., Sec. 534 and notes.

And the law is the same where the suit is by one who acted as broker to recover commissions for making the purchases or sales, where he had knowledge of the character of the transactions, for in such case he is a *particeps criminis* and has no better right to recover than either of the other parties to the wager. Embrey v. Jemison, *supra*; Kahn v. Walton, 46 Ohio St., 195; Pearce v. Foote, 113 Ill., 229.

The evidence in the case tended to show that the transactions between the parties were simply wagers upon the course of the grain market at Chicago, although the plaintiff and his witnesses testified that the purchases and sales were real, and that deliveries would have been made if required by the customer. The defendants testified that there was no such understanding, and that the transactions were simply wagers; and, looking at the circumstances as detailed in evidence, we are unable to see how either party could have had any other understanding. The account attached to the petition shows that in the brief period of about two months five hundred and thirty-five thousand bushels of grain were bought, and that exactly the same number were sold without a single delivery having been made. The customer was required to deposit a certain amount in the way of “margins,” and which he has to keep good by adding thereto, when in the course of the transaction he met with losses. There were, it seems, twenty-three different but continuous deals. When a certain number of bushels of corn or wheat was bought for future delivery, on the next, or a few days thereafter, a like number was sold. If the sale was at a price higher than the purchase, commissions were deducted, and the remainder, if any, went to the credit of the customer’s account; if for less than the purchase, the commissions were added to the difference, and the sum went to his debit. Or if the first transaction was a sale, it would be closed by a purchase of a like number of bushels.

And here, if the purchase was upon a rising market, the customer lost, if upon a declining market, he gained, and his account was in each case debited or credited accordingly. Now when it is remembered that neither of the defendants had any actual connection with the grain business, had no need to buy or sell grain of any kind—the one being a young physician and the other an assistant in the office of the city treasury, and without the means, as the plaintiff knew, of purchasing such large quantities of grain, and as no grain was in fact delivered, each transaction being settled according to the difference in the market between the time of purchasing and the time of selling, or conversely, between the time of selling and the time of purchasing—what inference should be drawn from such a state of facts other than that reached by the jury? The court charged the jury that “a contract for the sale of grain or other commodity, to be delivered at a future day, is not invalidated by the fact that it was to be delivered at a future day, nor by the additional fact that at the time of the making of the contract the vendor had not the goods in his possession, nor by the additional fact that at the time he had not entered into any contract to buy or procure the goods, nor by the further fact that at the time he had no reasonable prospect of procuring them for delivery, according to the tenor of the contract. In such case, if either party to the contract has the right to compel a delivery or receipt of the goods, it is a valid contract, although the parties thereto thereafter settle and agree to close up the transaction by a payment of differences. Nor does the statute of Ohio, which has been read and commented upon in your hearing, apply to sales of grain or other goods for future delivery, where the only option is as to the time of delivery within certain limits.” And then charged that “an understanding between the vendor and vendee, at the time the contract is made, that the goods shall not be delivered or received, but merely to pay or receive the difference between the price agreed upon and the market price at the time agreed upon for its delivery, brings the transaction within the statute, and is void. Nor does it matter what form the parties give to their contracts. * * * No amount of painstaking or legal exactness,” they were told, could change the result, if the intention of the parties appeared to have been to deal in future options simply. The case was in this regard fairly submitted to the jury, and we may add, that if it was proper for us to weigh the evidence, we would not feel at all

disposed to disturb the verdict. It matters little what devices may be used, or what phraseology may be adopted, for the purpose of giving to a transaction a fair mercantile appearance; if a court and jury are satisfied from all the circumstances in evidence that it is simply a wager in disguise, there is no rule of law nor principle of reason that can require them to disregard their convictions upon the subject. Persuasions so obtained are no more than the result of the aggregate proof of the evidence, by which, in every case, the verdict of the jury should be rendered; and no amount of what they may honestly believe to be perjury can require them to disregard conclusions forced upon their minds by all the evidence in the case.

The next question is, had the defendants the right on their counter-claim to recover back the sums paid the plaintiff in the way of margins? This the court charged they had the right to do, "less the amount they received by the way of profits," if the jury found under the instructions before given them that the "contracts were gambling transactions," and were known at the time to be such by the plaintiff. The plaintiff makes two objections to the right of the defendants to recover: (1) That he simply acted as agent of the defendants in making the purchases and sales, and that the money received by him was paid to the persons with whom he dealt on behalf of the defendants; and that he is therefore not the "winner"—the statute, section 4270, Revised Statutes, simply providing for a recovery against the "winner" by the loser on any bet or wager. (2) That he paid the money over, according to the understanding, before notice or suit brought. If these purchases and sales of grain were in fact wagers on the future price of the grain ostensibly dealt in, then it is clear that the relation of principal and agent did not exist between the defendants and the plaintiff; and that they were such was found by the verdict of the jury under proper instructions from the court. The parties to a wager stand in opposed relations, each acting for himself in the matter of making it. Both may be *particeps criminis* with respect to the crime—in other words, principals in its commission—but neither acts for the other. And this is so in many offenses against public policy, as in usury and the like. It is not doubted but that in a sense either party to a wager may have an agent—that is, either may act for himself through another; as in this case, the defendants at first acted through Hale, who by their direction, put up the margins for

them, and so the plaintiff may have acted for or with other parties in Chicago. But under the finding of the jury that the transactions between the parties were wagers, neither could have acted for the other. The assumption of the plaintiff that he was buying or selling wheat for the defendants was a mere disguise adopted for the purpose of concealing the nature of the real transaction, and as it had no foundation in fact, the agency based upon it is alike a mere assumption, and had no real existence. The transactions were had directly with the plaintiff, through his agent, Collins, at Cleveland. The money was received of the defendants by Collins, and transmitted to him at Chicago. If he saw fit to divide with others associated with him in making the wager, that was a matter of his own concern, but it cannot alter the case, nor affect the right of the defendants to recover from him as a "winner" under the statute.

The cases cited and relied on by counsel for the plaintiff in error are without application here, for the reason that they are all cases where there was no question about the agency of the party from whom a recovery was sought. *Smith v. Bromley*, 2 Doug., 696, note; *Bone v. Ekless*, 5 Hurl. & N., 925, 928; *Whart. Ag.*, Sec. 250. They established the well-settled principle that where money is delivered to an agent, to be applied to an illegal purpose, while the agent has no right to retain it, yet where he has paid it over in accordance with the instructions to him, before notice from the principal not to do so, no recovery can be had against him. For example, if suit had been brought by Buel and Watkins to recover of Hale the money placed in his hands to be put up as margins with Lester, Hale, by way of defense, might have shown that he had placed the money as instructed before notice to him not to do so. But Lester can make no such defense, the character of agent having been simply assumed, to conceal the real nature of the relation between himself and the defendants, and to disguise what was known to be a crime. The relation was an assumed, and not a real one, and is therefore no defense to the action given the loser by statute to recover of the winner money lost on a wager.

The provisions of section 4270 are not directed against any particular form of gambling. The language is: "If any person, by playing at any game, or by means of any bet or wager, loses to any other person any sum of money or other thing of value, and pays or delivers the same, or any part thereof, to the winner," the person who so loses and pays may, within the

time named, recover the same "from the winner thereof." The evil is the same whether the money is wagered upon the turn of a card, the result of a horse-race, or the course of the market; and the language is broad enough to include not only either of these forms of betting, but any form in which money is lost and paid to the "winner" upon a bet or wager. A wager is generally defined by lexicographers as something hazardous upon an uncertain event, and this agrees with its legal acceptance. As defined by Anson: "A wager is a promise to pay money or transfer property upon the determination or ascertainment of an uncertain event." Anson Cont., 166. With regard to the future, the market is always a matter of uncertainty and speculation. When left to its natural course, it will fluctuate from day to day, but still more so when manipulated by gamblers, who, under the disguise of buying and selling, simply lay wagers upon its future course. Such transactions the Legislature has, in section 6934a, Revised Statutes, declared to be gambling, and this section should be construed with section 4270, id., so as to suppress gambling upon the future price of grain and other commodities, as upon any other uncertain event, not merely because of its influence upon public morals, but because of its ruinous effect upon legitimate trade and commerce. In Pearce v. Foote, 113 Ill., 228, 239, Scott, J., in construing similar statutes in the State of Illinois, said: "Although the statutes being considered are highly penal, there is no warrant for construing them with any unreasonable strictness. They ought rather to have a just, if not liberal, construction, to the end the legislative intention may be accomplished—to prohibit all dealings in options in grains or other commodities. Nothing is productive of more mischievous results."

"Considerable fortunes secured by a life of honest industry have been lost in a single venture in 'operations.' The evil is all the more dangerous from the fact it seemingly has the sanction of honorable commercial usage in its support. It is a vice that has in recent years grown to enormous proportions. Legitimate transactions on the board of trade are of utmost importance in commerce. Such contracts, whether for immediate or future delivery, are valid in law, and receives its sanction and all the support that can be given to them. It is only against unlawful 'gambling contracts' the penalties of the law are denounced, and no subtle *finesse* of construction ought to be adopted to defeat the end it is to be hoped may be ultimately accomplished."

It may well be doubted whether it required the legislative declaration contained in section 6934a, Revised Statutes, that contracts for such options as are made punishable by it should be construed to be "gambling contracts," to bring them within the remedy given the loser against the winner by section 4270, id., for, being wagers upon an uncertain event, they would come within the letter and spirit of that section, without such legislative provision; and to so hold is not to give to the statute a liberal but a strict construction. We see no error in the charge of the court. It was liberal to the plaintiff, and in some respects more so than was required by the law and facts of the case.

Judgment affirmed.

Supreme Court of Appeals of Virginia.

KRAMER v. BLAIR ET AL.

1. **AGENCY—Limited or Special.**—Real estate agents are informed by letter from a land-owner that for his property "he will take," etc., "he will sell," etc., or "my price is," etc. *Held:* This confers only a limited or special authority, and appoints the party agent to receive and transmit offers only, and does not confer authority to sell as agent.
2. **IDEM—Burden of Proof.**—When the principal, in a suit brought to enforce a contract entered into in his name by a supposed agent, denies the authority of the agent, the burden of proof to establish the authority of the agent is on the party seeking to enforce the contract.
3. **REAL ESTATE AGENTS—Definition of—General Powers of.**—Real estate agents are those who negotiate the sale or purchase of real property, but the power of a real estate agent does not generally extend to execute a sale, but merely to bring the parties together, or to negotiate for the contract.
4. **SALE OF LAND—Authority of Agent—Duty of Purchaser.**—Powers of real estate agents usually being to bring the parties together and negotiate a sale, they are, therefore, regarded as agents with special or limited authority, and it is incumbent upon the purchaser from them to look to their authority.

Decided December 3, 1891.

APPEAL from the Hustings Court of Roanoke City. Opinion states the case.

Mr. Justice LACY delivered the opinion of the Court:

This is an appeal from a decree of the Hustings Court of Roanoke City, rendered at its May term, 1891.

The bill was filed by the appellees to have specific performance of an alleged contract in writing for the sale of land against the appellant. The alleged contract set up in the bill was claimed to have been made with certain agents or brokers, doing business in the name and style of Hanckel, Kemp & Co. The said agents or brokers admit the contract, and seek to sustain it as against their alleged principal

(the "appellant,) and insist upon their authority to bind their principal. The alleged principal denies the authority to bind him as his agents, and repudiates the contract altogether, and refuses to do any act to ratify the same. The evidence on both sides was taken in the form of depositions, and upon the hearing the said court decreed specific performance against the said appellant. From this decree the case is here on appeal.

The questions arising for adjudication on this appeal are, first, whether any contract has been made, binding upon the alleged principal (the appellant); and, in the second place, whether this contract, if so duly made, upon competent authority, should be specifically performed by the court. In the first place, therefore, we will consider how far the said real estate agents or brokers were clothed with authority to make a contract for the appellant, acting within the scope of their authority as his agents. "What authority had been conferred on the alleged agents by the appellant to make a complete sale of these lots?" is the first question argued by the learned counsel for the appellees. And it is said by the learned counsel for the appellant that "the first question that naturally arises in a case of this character is whether the alleged agents had the authority to make the sale that it is charged was made."

We will first consider this question upon the facts in the record. The whole matter rests in writing and in telegrams, so far as the principal and the agent are concerned. The first letter which passed between them is as follows:

"ROANOKE, VA., Sept. 19, 1888.

"F. C. Kramer, Esq., Carlisle, Pa.:

"Your son gave us your address, and said if we wrote you that we might get a chance to sell some of your property here. You have three lots between market house and city hotel that we would like to get your figures on and terms—if cash or part cash; also any other property you may give us.

"HANCKEL, KEMP & Co."

The answer to this was as follows:

"Yours of Sept. 19th, 1888, to hand. My price is \$9,000 cash, clear above commissions and expenses of any kind, for my three lots on Salem avenue, between Jefferson and Neeson streets.

"F. C. KRAMER."

And the next letter is:

"Yours to hand. I will sell lots on Salem avenue, running back to Campbell street, separately, \$3,500 cash for Lot 89; \$3,250 cash for Lot No. 90; \$3,000 for Lot No. 91.

"F. C. KRAMER."

On Sept. 26th, 1888, Hanckel, Kemp & Co. wrote as follows to Kramer:

"Your favor 1st to hand, and since wrote you, but have received no reply. We think if you would price these three lots at \$10,000, one third cash, balance one and two years, notes bearing interest at 6 per cent., one and two years, we can sell the lots, but find very much trouble in getting as much cash as you wish. Our commission on this would be \$260. We would be glad if you would run down to our city, as I think it would be to your interest; also advise if you would sell one lot, giving price and terms."

On the next day Kramer wrote to Hanckel, Kemp & Co.:

"Your letter to hand. I will take for my lots on Salem ave. * * * \$10,000, one half cash," etc. "I have no objection to selling the lots separate."

On October 3d he again wrote:

"I have concluded to take \$10,000 for my lots on Salem avenue; one third cash, balance one and two years, 6 per cent., secured by deed of trust on the ground. Will give you 2 per cent. commission. Awaiting reply."

On Oct. 6th Hanckel, Kemp & Co. wrote:

"We have just wired you that we closed sale of your Salem avenue lots, which we have done provided you will accept conditions which we think very liberal"—setting out the terms proposed, and telegraphed:

"Salem-avenue lots sold if you will accept terms as per my letter of this morning."

And wrote same day:

"We understand that some other agents have wired you that property was sold by them. We were the first to sell," etc.

This was the sale to Simmons, upon which Kramer was sued, disposed of at this term in suit of Simmons v. Kramer [15 V. L. J., 732.] Stated that they had wanted sixty days to raise the cash payment; but that they later in the day had heard from parties who would pay the \$3,000 required in cash (this being because other agents claimed to have sold to Simmons during the day,) adding: "In addition to this, if you will close sales with our parties, we will send you our check for \$100, or you can deduct same from our commission," and telegraphed on the same day:

"Sold lots as per your letter. We claim first sale. Disregard my letter of this morning."

On the same day other agents still telegraphed to Kramer (Asbury, Greider & Co.):

"Will you take \$11,000 third cash, on two years?"

And on the same day Hanckel, Kemp & Co. later in the day telegraphed:

"Do not close for \$11,000; might get you \$12,000."

On October 11th Hockaday & Co. wrote to this appellant that they had made sale of these same lots.

The said firm, Hanckel, Kemp & Co., now claim to have made a sale, binding on Kramer, to the appellees; and this suit is brought by the appellees, as already stated, to compel Kramer to specifically perform the contract made for him by his said agents, Hanckel, Kemp & Co.

In the first place, it is clear that if Hanckel, Kemp & Co. have ever been appointed the agents of Kramer to make a sale for him, they have failed to produce any proof of their appointment as such. Kramer had said to them: "I will sell," etc., "my price is," etc., and "I have concluded to take." But he has nowhere authorized them to act as his agents; and they themselves evidently did not claim any such authority at the time. In the letter announcing the alleged sale they say: "In addition to this, if you will close sale with our parties we will send you our check for one hundred dollars." Now they say they had authority, and did at this date make a binding sale, on which the appellees, Blair, etc., brought their suit. And on the same day, after they had made a valid and binding sale, as they now claim, they telegraphed him. "Do not close for eleven thousand; might get you twelve thousand." How could they do this if they had already sold for \$10,000? In addition, it is proved by the deposition of W. A. Kramer that the appellant declined to appoint them, or any other real estate agents or brokers, his agents to make a binding sale for him.

As has been said, Kramer had no dealings directly with the appellees; they claim only through their dealings with Hanckel, Kemp & Co., who were, as they themselves admit, agents, with special and limited powers, to find a purchaser, subject to the ratification of Kramer. It was incumbent upon the buyers to look to the authority of the special agent, and they cannot derive any benefit from an unauthorized act of the agent. The record shows that, pending the negotiations, and while they were trying to borrow the money to make the cash payment, and offering other terms, the appellees and the agents knew that other persons anxious to become the purchasers had before that offered the price named.

As was said by Judge Pendleton in *Hooe et*

als. v. Oxley & Hancock, 1 Wash., 23: "Agents may be clothed either with general or special powers. (1) A general agent may do everything which the principal may; powers of this sort are not usually granted, and none such appear in the present case. (2) Of the second sort are agents limited as to the objects or the business to be done, and left at large as to the mode of transacting it? If a particular mode is not prescribed by the original power, that which the agent may adopt the principal may, by approving, sanctify, and give to it equal validity as if it had made a part of the original authority, excluding the idea of collusion between the agent and the third party. To abuse the power conferred by the principal, such a circumstance would defeat the third party in his attempt to charge the principal. Special agents are limited as to the objects or business to be done, and must in all things pursue the power or authority which is given them, both as to the object and manner of effecting it, if that be also prescribed. They are the creatures of the power or authority, and therefore cannot in any manner exceed it or deviate from it, and if they do, the principal is not bound.

"If a person be appointed a general agent, as in the case of a factor for a merchant residing abroad, the principal is bound by his acts. But an agent constituted for a particular purpose, and under a limited and circumscribed power, cannot bind the principal by any act in which he exceeds his authority; for that would be to say that one man may bind another against his consent." Opinion of Buller, J., in *Fann v. Harrison*, 3 T. R., 762; *Bay v. Coddington*, 5 John Ch., 58.

"A special agent, constituted for a particular purpose and under a limited power, cannot bind his principal beyond his authority. This is a very clear and settled rule." Ch. Kent in *Skinner v. Dayton*, 5 Johns., Ch. 304; citing *Nixon v. Hyserotts*, 5 Johns. Rep., 58; *Gibson v. Colt*, 7 Johns. Rep., 390. See, also, *Denning v. Smith*, 3 Johns., Ch. 345.

With respect to an agent constituted for a particular purpose, he who deals with him deals at his peril, if the agent passes the limit of his power; for it was his duty and his right to look to his instructions for the extent of his authority. It is said that a principal is liable to a third party for all contracts entered into by his broker or agent within the scope of his authority, as defined by direct instructions. The broker must obey his instructions in order to bind his principal. *Siebold v. Davis*, 67 Iowa, 560; *Story on Agency*, Secs. 126, 127.

Real estate brokers or agents may be defined to be those who negotiate the sale or purchase of real property; but the power of a real estate agent or broker does not generally extend to execute a sale, but merely to bring the parties together, or to negotiate for the contract. *Pringle v. Spaulding*, 53 Barb., 17; *Haydock v. Slow*, 40 N. Y., 363; *Force v. Dutcher*, 18 N. J. Eq., 401; *Morris v. Ruddy*, 50 N. J. Eq., 236.

It is clear that there must be an appointment to constitute one an agent. It is a rule of law that no one can become an agent except by the will of the principal. *Evans on Agency*, 22; *McGoldrick v. Willits*, 52 N. Y., 612; *Rochester Bank v. Bentley*, 27 Minn., 87; *Gifford v. Landrim*, 37 N. J. Eq., 127.

"In the absence of evidence of express appointment, of ratification, or of an estoppel, there is no sufficient evidence of agency." *Alexander v. Rollins*, 84 Mo., 657.

It is said that an agency cannot be proved by general reputation, but is a fact to which a witness having knowledge of its existence may testify. *Railroad and Banking Co. v. Smith*, 76 Ala., 572.

When the principal, in a suit brought to enforce a contract entered into in his name by a supposed agent, denies the authority of the agent, the burden of proof to establish the agent's authority is on the party who seeks to enforce the contract. *McCarty v. Strauss*, 21 La. Ann., 592.

In the case of *Grant v. Ede*, 85 Cal., 418, (20 Am. Rep., 237,) where the supposed authority to make a complete sale was as follows: "As you stated you could get \$30,000 for the place you occupy on Market street, and, if you can, we will sell at that price any time before Sept. 1st, 1887, and allow you 2½ per cent. on said price, and, if no sale is made, no expense made to us," and on this authority the agent, Martin, sold to Grant (the appellant) on the 23d of August, 1887, for \$30,000, \$500 cash and residue on execution of deed by Ede, and signed himself as agent for Ede, and received \$500 as part of purchase money, it was held that "we will sell" does not mean that Martin is authorized to sell, the court saying: "A general authority to sell real estate includes merely the power to find a purchaser therefor, and the agent cannot conclude a contract which will be binding upon his principal." And Mr. Freeman appends a note to this case, citing *Schultz v. Griffin*, 18 Amer. St. Rep., 828, saying: "Such letter does not constitute an agreement of the principal which such purchaser can enforce, as it merely fixes a price, and does not specify any form of

deed or time of payment, or of delivery of possession, or authorize the agent to make such specifications."

In every letter written to these agents Kramer said "I will take," or "I will sell," "I have concluded to sell," or "my price is," and nowhere appointed any agent to sell for him. He authorized them to find a purchaser, and agreed to pay them a commission for doing this. Their employment was to conduct negotiations for the sale of this real estate, and no one better understood this than these agents, who did not consider at the time that their employment was such as would authorize them to conclude any sale, except subject to the approval of their employer. And of these negotiations the evidence shows that the appellees were fully informed, the correspondence being conducted at their solicitation. See *Fitch on Real Estate Agencies*, pp. 7, 14.

It is clear that Hanckel, Kemp & Co., had no authority to make a binding contract for their principal, and, having entered into one in his name, their act, so far as he is concerned, is null. There has been no sale made by Kramer (the appellant), nor by which he is in any degree bound.

The Hustings Court of Roanoke City having decided otherwise, the decree so deciding and appealed from will be reversed and annulled, and such decree rendered here as the said court ought to have rendered.

And this disposes of the case, so that it is unnecessary to consider the second branch of the case as to the question whether the contract if valid and binding on Kramer, is such that the court should, in the exercise of a judicial discretion, specifically perform.

Decree reversed.

WILLS—Contest.—In an action to contest the validity of a will on the ground of want of testamentary capacity and undue influence, an instruction which lays down the rule without qualification that, in determining whether the writing produced was the will of the testator, the jury have "nothing whatever to do with the propriety or impropriety of the bequests mentioned in said writing, or as to whether said bequests were just or unjust, or as to whether said bequests should or should not have been made," is erroneous, since in such a case all the surrounding circumstances, including the bequest itself, are proper and material to the determination of the issue.—*McCommon v. McCommon*, Ill., 31 N. E. Rep., 491.

Supreme Court of Pennsylvania.

DIFFENBAUGH v. THE UNION FIRE INSURANCE COMPANY.

Where a husband insured his wife's property in his own name and received a policy which contained a clause that "the entire policy shall be void * * * if the interest of the insured be not truly stated therein;" in an action by the wife, on the policy: *Held*, that as there was no pretense that, when the husband insured the property in his own name, he informed the company that the property belonged to the wife, the latter could not recover.

Filed July 13, 1892.

APPEAL of Emma M. Diffenbaugh, plaintiff, from the judgment of nonsuit entered by the Court of Common Pleas of Lancaster County, in an action of assumpsit brought by her against the Union Fire Insurance Company of San Francisco upon a policy of fire insurance.

By amendment the title of the suit was changed to "Henry Diffenbaugh, agent for, and for the use and benefit of, Emma M. Diffenbaugh, wife of Henry Diffenbaugh," etc.

The policy of insurance on which this suit was brought was made to Henry Diffenbaugh, but insured a building and its contents which belonged to his wife. There was no written application for the insurance. The policy contained the following clause:

"This entire policy shall be void if the insured has concealed or misrepresented, in writing or otherwise, any material fact or circumstance concerning this insurance or the subject thereof; or if the interest of the insured in the property be not truly stated therein; or in case of any fraud or false swearing by the insured touching any matter relating to this insurance or the subject thereof, whether before or after a loss * * * or if the interest of the insured be other than unconditional and sole ownership."

Chief Justice PAXSON delivered the opinion of the Court:

This was an action in the court below to recover the amount of loss sustained under a fire insurance policy. Upon the trial below the plaintiff offered the policy in evidence, which upon objection, was excluded by the court. The ground for this ruling was that the policy was in the name of Henry Diffenbaugh while the suit was brought in the name of Emma M. Diffenbaugh, his wife. In other words, the insurance was to the husband, while the insurable interest and the title to the property was in his wife. The learned judge also declined to permit the plaintiff to prove by her husband that he was acting as her agent when

he made the application for the insurance with the agents of defendant company. There was no offer to show that when the company wrote the policy they were informed of the fact that the property belonged to the wife.

The plaintiff relies upon *Harris v. York Mutual Insurance Co.*, 51 Pa., 349; *Story on Agency*, and some other authorities, to sustain her position that where an insurance is effected by an agent, he may insure in his own name or in the name and for the benefit of his principal. *Story* does certainly lay down this doctrine, and we are not now disputing it. All that *Harris v. The Insurance Co.* decided was that a tenant by the curtesy has an insurable interest in the real estate of his wife. It is true, the language of *Woodward, C. J.*, is broader than the point decided. In the case in hand, however, the policy contains a clause which takes it out of the line of cases cited by the appellant. The clause is as follows: "The entire policy shall be void * * * if the interest of the insured be not truly stated therein." This clause is not without force. Its meaning is apparent. Its object is to enable the insurance company to know whom it is insuring. It might be entirely willing to insure the property of A, and yet refuse to insure the property of B upon any terms. As there was no pretense that when Henry Diffenbaugh insured this property in his own name he informed the company that the property belonged to his wife, we are of opinion the latter cannot recover, and that she was properly nonsuited.

It is true that equity will reform a written contract in a case of fraud, accident or mistake. There was no evidence, however, before the court by which the contract could have been reformed, nor was there any offer made to reform it.

Judgment affirmed.

Brief Notes of Current Irish Cases Not Yet Reported.

By H. M. FITZGIBBON, Barrister-at-Law.

[A full report of each of these cases will shortly appear in the *Irish Law Times Reports*.]

FISHERY LAWS—5 and 6 Vic., Ch. 106, Sec. 27.—The fact that a boat under or beside which salmon could not pass intervened between the bank and the end of a net shot down or drawn across the river, is not in itself an answer to a complaint under this section. (Q. B. Div.) *M'Gillycuddy v. Sullivan*, May 11.

INTEREST.—Where a loan is secured by a deed and the interest is at a usurious rate (60 p. c.),

if the position of the debtor was such as left him at the mercy of the creditor the court will set aside the deed. (Chatterton, V. C.) Rae v. Joyce, May 11.

LANDLORD AND TENANT—Redemption of Rent Act, 1891, Sec. 1.—Application to Set Aside Originating Notice.—Lands were conveyed in 1879, by the applicant's predecessor in title, in fee simple to the use that the grantor, her heirs and assigns, should receive a perpetual yearly rent-charge of £45 out of the lands. Held, not to be within the act, no relation of landlord and tenant being created, and a rent-charge being different from a rent service. Application granted. (L. C. Ct.) Peacock v. Christie, April 20 and 25.

LANDLORD AND TENANT—Turbary.—Where the contract is silent as to turbary the landlord is given by the Act of 1881 a right of entry which he did not before possess. (Chatterton, V. C.) Townshend v. Cotter, May 18.

LICENSING.—No appeal lies under 35 and 38 Vic., Ch. 94, Sec. 52, from Petty Sessions in the case of a breach of the licensing laws where the prosecutor is a police officer. (Recorder of Belfast.) M'Cann v. Hurst, May.

PRACTICE—Costs.—Where a defense is put in before a motion to remit is brought the costs of such defense must be borne by the defendant. (Andrews, J.) M'Clure v. Murray, May 16.

Any application to vary any order as regards costs must be on summons. (Porter, M. R.) Dublin, Wicklow and Wexford Ry. Co. *Ex parte*

Scallion, May 16.

Costs will not necessarily follow the result if the manner of a party's swearing is such as should disentitle him to them. (Chatterton, V. C.) Rae v. Joyce, May 11.

PRACTICE—Judgment.—A judgment which has been entered up out of court may be vacated if merits are shown and leave given to defend. (Q. B. Div.) Malley v. Stoney, May 17.

PRACTICE—Payment into Court.—Will not be ordered where it is clear that a pleadable defense exists, save in very exceptional circumstances. The swearing of the plaintiff that he believes the defendant will make away with his goods is not such a circumstance. (Q. B. Div.) Malley v. Stoney, May 17.

O. XVI., R. 11.—The court may add a plaintiff at any stage of the action, though it may necessitate entirely new pleadings, and though the plaintiff knew that the co-plaintiff ought to have been joined. (Andrews, J.) Dixon v. Mayor of Limerick, May 16.

WILL.—The words "all chattel interest of every description whatever" in a will will not pass residuary estate. (Chatterton, V.C.) Young v. Greene, May 10.

The term "chattel" or chattel property is sufficient to pass general personal property where used in contradistinction to freehold property. Of two inconsistent residuary clauses the second will only pass anything which may escape the first. (Porter, M. R.) Heron v. Heron, May 14.

—*Irish Law Times.*

Legal Notices.

Rule of Court.

RULE 20. * * * * Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

FIRST INSERTION.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 7th day of September, 1892.

Susan M. White } No. 14093. Eq. Docket 34.

Wallace C. White. } On motion of the plaintiff, by Mr. Neill Dumont, her solicitor, it is ordered that the defendant, WALLACE C. WHITE, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is divorce of plaintiff from the bond of matrimony with the defendant.

And it is further ordered that this order be published once week for three consecutive weeks prior to said day in the Evening Star newspaper, and in the Washington Law Reporter, both having circulation in said District of Columbia.

By the Court. W. S. COX, Justice, &c.

True copy. Test: J. R. Young, Clerk, &c.

36 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 7th day of September, 1892.

James H. DeVaughn et al. } No. 13602. Eq. Docket 33.

William H. DeVaughn et al. } On motion of the plaintiffs, by Mr. C. E. Nicol, their solicitor, it is ordered that the defendants, WILLIAM H. DEVAUGHN, SAMUEL P. DEVAUGHN, ELIZABETH DEVAUGHN, CATHERINE SPALDING, GEORGE SPAULDING, ELIZABETH KELLY, WILLIAM KELLY, CHARLES BEACH, CARBIE L. BEACH, FANNIE SULLIVAN, CAROLINE S. DEVAUGHN JOHN H. DEVAUGHN, ALICE E. DEVAUGHN, EDGAR N. DEVAUGHN, JANE DAVIS, ELIJAH DAVIS, ALICE CROWN and WINFIELD CROWN, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a decree declaring that certain devises in the will of Samuel DeVaughn, deceased, in remainder to Martha Ann Mitchell, deceased, lapsed and became void; also to have the real estate and premises in said devises mentioned sold, and the proceeds distributed among the persons entitled thereto.

By the Court. W. S. COX, Justice, &c.

True copy. Test: J. R. Young, Clerk, &c.

36 By M. A. Clancy, Asst. Clerk. [Filed September 7, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

This 6th of September, 1892.

Annie Phipps } No. 14015. Eq. Docket 34.

Edwin S. Phipps. } On motion of the plaintiff, by Mr. E. B. Hay, her solicitor, it is ordered that the defendant, EDWIN S. PHIPPS, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is divorce on account of desertion.

By the Court. W. S. COX, Justice, &c.

True Copy. Test: J. R. Young, Clerk, &c.

36 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of September, 1892.

Vilett Larkin } No. 13999. Eq. Docket 33.

John F. Larkin. } On motion of the plaintiff, by Mr. E. B. Hay, her attorney, it is ordered that the defendant, JOHN F. LARKIN, cause his appearance to be entered, herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for divorce, cause, desertion.

By the Court. W. S. COX, Justice, &c.

True Copy. Test: J. R. Young, Clerk, &c.

36 By M. A. Clancy, Asst. Clerk.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration c. t. a. On the personal estate of PHINEAS J. STEER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day of August, 1892.

EDWARD STEER,
300 I street, n. w.

36 No. 5052. Ad. D. 18. Randall Hagner, Proctor.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of HELEN JACKSON, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 2d day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of September, 1892.

The National Safe Deposit, Savings and Trust Company,
by THOMAS R. JONES,
3d Vice President.

36 No. 5143. Ad. D. 18. Jno. C. Wilson, Proctor.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, letters testamentary on the personal estate of MARY JOHNSON, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of September, 1892.

The National Safe Deposit, Savings and Trust Company,
by THOMAS R. JONES,
3d Vice President.

36 No. 5161. Ad. D. 18. Jno. C. Wilson, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business,

This 6th of September, 1892.

In re estate of GUISEPPE CORTI, late of the District of Columbia. No. 5163. Administration Doc. 18.

Application having been made for letters of administration on the estate of said Guiseppe Corti, deceased, by Gregoria Corti (to issue to Michael Gatti).

Notice is hereby given to all concerned to appear in this court on September 23d, 1892, at 11 o'clock a. m., to show cause if any exist against the grant of such application.

A copy of this order shall be published in the Washington Law Reporter, once in each of three successive weeks before said day.

By the Court: W. S. COX, Justice.
A true copy. Teste: L. P. WRIGHT, Reg. of Wills, D. C.
36 Gordon & Gordon, Proctors for applicant

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 6th day of September, 1892.

Sallie Flynn { No. 18,877. Equity Docket 33.

August B. Flynn. On motion of the plaintiffs, by A.C. Richards, her solicitor, it is ordered that the defendant, AUGUST B. FLYNNE, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a decree of divorce from the bonds of matrimony with the defendant on the grounds of desertion and abandonment for the full and uninterrupted period of more than two years.

By the Court: W. S. COX, Justice, &c.
True copy. Teste: J. R. Young, Clerk, &c.
36 By M. A. Clancy, Asst. Clerk.
[Filed September 6, 1892. J. R. Young, Clerk.]

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**
Holding a Special Term for Orphans' Court Business.

This 2d of September, 1892.

In the matter of the estate of JOSEPH A. SMITH, late of the District of Columbia, deceased. No. 5071. Ad. D. 18. Application for the Probate of the last Will and Testament, and for letters testamentary on the estate of said deceased, has this day been made by George H. B. White, of the District of Columbia.

All persons interested are hereby notified to appear in this court on Friday, September 30th, 1892, at 11 o'clock a. m., to show cause why said will should not be proved and admitted to probate, and letters testamentary on the estate of said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star of Washington, D. C., and the New York Herald, previous to the said day.

By the Court: A. C. BRADLEY, Justice.

36 A true copy, Teste: L. P. WRIGHT, Reg. of Wills, D. C.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 7th day of September, 1892.

William E. Jones, Plaintiff,

v. } Daniel W. Taulmann et al., Defendants. } No. 14122. Eq. Doc. 34.

On motion of the plaintiff, by Mr. E. H. Thomas, his solicitor, it is ordered that the defendants, DANIEL W. TAULMANN and CECELIA TAULMANN, his wife; GEORGE R. L. TAULMANN and GRACIE M. MAHON, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain partition by way of sale of Taulman Tract of three acres of land known as part of Youngsborough in the District of Columbia, and to confirm deeds of defendants George R. L. Taulman and Gracie M. Mahon to plaintiff.

By the Court: W. S. COX, Justice, &c.

True copy. Teste: J. R. Young, Clerk, &c.

35 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

James A. O'Donovan et al. } In Equity. No. 12,820.

Mary E. O'Donovan.

Hugh T. Taggart, the trustee heretofore appointed by the decree passed in this cause to make sale of the real estate in the bill of complaint described, having reported to the court that he had made sale of said real estate, viz: part of lot 207 in Beatty and Hawkins' addition to Georgetown, having a front of 34 feet 4 inches on High street and extending back in parallel lines to Market street, on which last mentioned street it has a front of 32 feet, to Mary Harrington, at the rate of \$1.05 per square foot, amounting to \$4,040.90, less the sum of \$60.00 allowance for deficiency in the ground, making the net purchase money \$3,980.92.

It is, this 7th day of September, 1892, ordered by the court that the said sale be ratified and confirmed unless cause to the contrary be shown on or before the 10th day of October, 1892.

Provided that a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to said day.

WALTER S. COX, Justice.

A true copy. Teste: J. R. Young, Clerk.

By M. A. Clancy, Asst. Clerk.

[Filed September 7, 1892. J. R. Young, Clerk.]

SECOND INSERTION.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphan's Court business, letters of administration on the personal estate of GEORGE PAGE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of August, 1892.

L. C. BAILEY,
35 Jas. H. Smith, Proctor.
1406 15th St. n. w.
No. 5111. Admin. Doc. 18.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

Holding a Special Term for Orphans' Court Business,
August 28, 1892.

In the case of William J. Miller, administrator c.t.a. of WASHINGTON C. MILBURN, deceased, the administrator c.t.a. aforesaid has with the approval of the court, appointed Friday, the 22d day of September, A. D. 1892, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the administrator c.t.a. will take the benefit of the law against them.

Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star previous to the said day.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
35 No. 4578. Ad. D. 17. Carusi & Miller, Proctors.

This is to Give Notice

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court Business, letters of administration on the personal estate of CHARLES NEALE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of August, 1892.
JAS. F. HOOD,
35 No. 5118. Admn. Doc. 18. Pacific Building, 622 F St.

This is to Give Notice

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of VIRGINIA C. MILLER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of July, 1892.
VIRGINIA MILLER,
R. Ross Perry, Proctor. 1006 New Hampshire Ave.
35 No. 5051. Ad. Doc. 18.

This is to Give Notice

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court Business, letters testamentary on the personal estate of GEORGE F. WISWELL, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of August, 1892.
MARY ELLA WISWELL.
ALBERT C. PEALE.
S. Herbert Giese, Proctor.
35 No. 5101. Ad. Doc. 18.

U. S. Geological Survey.

This is to Give Notice

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of LOUISA CATHARINE GONZENBACH, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 22d day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of August, 1892.
LOUISE BOWDLER,
Judson T. Cull, Proctor. 17th and H Sts., n. e.
35 No. 5119. Ad. Doc. 18.

Legal Notices.**THIRD INSERTION.****This is to Give Notice**

That the subscribers of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of WILLIAM B. MOSES, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 24th day of June, 1892.

WILLIAM H. MOSES.
HARRY C. MOSES.
ARTHUR C. MOSES.

34 E. B. Hay and Cole & Cole, Proctors.

This is to Give Notice

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of RICHARD GUNDLACH, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of August, 1892.

EDWARD KOLB,
811 E St. n. w., city.
34 No. 5082. Ad. D. 18. B. W. Lacy, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

This 19th day of August, 1892.

In re estate of MARY ALICE MAGRUDER DOWNMAN, late of Georgetown, D. C. No. 5145. Ad. D. 18.

Application having been made for the probate of a paper-writing propounded as the last will and testament, and for letters testamentary on the estate of said Mary Alice Magruder Downman, deceased, by Cynthia R. Downman:

Notice is hereby given to all concerned to appear in this court on Friday, Sept. 16th, 1892, at 11 o'clock a. m., to show cause, if any exist, against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter and Evening Star once in each of three successive weeks before said day.

By the Court. CHARLES P. JAMES, Justice.
A true copy. Teste. L. P. WRIGHT, Reg. of Wills, D. C.
34 Gordon & Gordon, Proctors for applicant.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of JOHN T. C. CLARK, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of July, 1892.

GEO. W. WISE,
2900 M St. n. w.

34

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of MARY A. GALT, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of August, 1892.

HENRY E. DAVIS,
Fendall Building.
34 H. E. Davis, Proctor.

The Washington Law Reporter.

ESTABLISHED 1874.

VOL. XX.

[WEEKLY]

No. 37

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WASHINGTON, D. C., - - - SEPTEMBER 15, 1892

Extracts From the "Sundry Civil" Appropriation Act of Congress Approved August 5, 1892.

APPROPRIATIONS WHICH ARE OF INTEREST TO PEOPLE IN THE DISTRICT OF COLUMBIA.

* * * * *

For post-office at Washington, District of Columbia: For continuation of building under present limit, two hundred and fifty thousand dollars.

* * * * *

NATIONAL ZOOLOGICAL PARK: For continuing the construction of roads, walks, bridges, water supply, sewerage, and drainage; and for grading, planting, and otherwise improving the grounds; erecting, and repairing buildings and inclosures for animals; and for administrative purposes, care, subsistence, and transportation of animals, including salaries or compensation of all necessary employees, and general incidental expenses not otherwise provided for, fifty thousand dollars, one-half of which sum shall be paid from the revenues of the District of Columbia and the other half from the Treasury of the United States; and a report in detail of the expenses on account of the National Zoological Park shall be made to Congress at the beginning of each regular session.

DISTRICT OF COLUMBIA.

METROPOLITAN POLICE: To meet the expenses for maintaining public order in the District of Columbia on the occasion of the national encampment of the Grand Army of the Republic, to take place in said District in September, eighteen hundred and ninety-two, nine thousand dollars: *Provided*, That policemen borne on the rolls of the police force of the cities of New York, Philadelphia, and Baltimore may be employed, and none other outside of the District of Columbia;

For the payment to the inspector of plumbing of the District of Columbia for additional labor and expense imposed on him under the act entitled "An act to authorize the appointment of an inspector of plumbing in the Dis-

trict of Columbia, and for other purposes," approved April twenty-third, eighteen hundred and ninety-two, five hundred dollars;

POLICE COURT: For compensation of one deputy marshal, at three dollars per day, nine hundred and thirty-nine dollars;

For furnishing the addition to the police court building, eight hundred dollars; one half of which sums for the District of Columbia shall be paid from the revenues of the District of Columbia and the other half from the Treasury of the United States.

That the President shall appoint a board of three members, residents of the District of Columbia, who shall each receive a compensation of eight dollars per day and who shall act as a board of revision, equalization, and appeals, with power to revise and equalize the assessment of eighteen hundred and ninety-two, and shall remain in session for a period of not less than ninety days nor more than six months, and their decisions in all cases shall be final; and the Commissioners are hereby required to detail such clerical force as may be necessary to aid said board in their duties: *Provided*, That the triennial assessment made in the year eighteen hundred and eighty-nine, pursuant to the act of March third, eighteen hundred and eighty-three, is hereby continued in force for the fiscal year ending June thirtieth, eighteen hundred and ninety-three; and all taxes for said fiscal year ending June thirtieth, eighteen hundred and ninety-three, shall be levied and collected upon the basis of said assessment, any other law to the contrary notwithstanding.

For compensation of the members of the board hereby created, four thousand three hundred and sixty-eight dollars or so much thereof as may be necessary is hereby appropriated, to be paid wholly from the revenues of the District of Columbia.

That the circle at the intersection of Sixteenth street and New Hampshire avenue, known as Hancock Circle, be, and the same is hereby, transferred to and located at or near, the intersection of Sixteenth street extended and Morris street; the location and dimensions of the said circle to be as shown on a map on file in the office of the Commissioners of the District of Columbia.

* * * * *

GOVERNMENT HOSPITAL FOR THE INSANE.

For current expenses of the Government Hospital for the Insane: For support, clothing, and treatment in the Government Hospital for the Insane of the insane from the Army and Navy, Marine Corps Revenue-Cutter Service, and inmates of the National Home for Disabled Volunteer Soldiers, persons charged with or convicted of crimes against the United States who are insane, all persons who have become insane since their entry into the military or naval service of the United States, who have been admitted to the hospital, and who are indigent, two hundred and sixty-eight thousand three hundred dollars; and not exceeding one thousand five hundred dollars of this sum may be expended in defraying the expenses of the removal of patients to their friends.

For the buildings and grounds of the Government Hospital for the Insane, as follows:

For general repairs and improvements, sixteen thousand dollars.

For special improvements, as follows:

For electric plant, for incandescent lights, and ventilating fans, twenty thousand dollars.

For inclosing new farm and refitting buildings thereon for hospital use, five thousand dollars.

COLUMBIA INSTITUTION FOR THE DEAF AND DUMB.

CURRENT EXPENSES OF THE COLUMBIA INSTITUTION FOR THE DEAF AND DUMB: For support of the institution, including salaries and incidental expenses, for books and illustrative apparatus, and for general repairs and improvements, fifty thousand five hundred dollars, three thousand dollars of which to be expended in the employment of instructors of articulation.

For buildings and grounds, as follows:

For inclosure, care, and improvement of grounds, and for repairs of buildings, including repairs of heating apparatus, plumbing, and sewerage, two thousand dollars.

HOWARD UNIVERSITY.

For maintenance of the Howard University, to be used in payment of part of the salaries of the officers, professors, teachers, and other regular employees of the university, the balance of which will be paid from donations and other sources, twenty-three thousand five hundred dollars. And the proper officers of said university shall report annually to the Secretary of the Interior how the appropriation is expended; and the Secretary of the Interior shall estimate in detail for the next fiscal year the items of expenditure provided for in this paragraph;

For tools, materials, wages of instructors, and other necessary expenses of the industrial department, three thousand dollars.

For books for library, bookcases, shelving and fixtures, five hundred dollars;

For material and apparatus for chemical, physical and natural history, and laboratory, five hundred dollars;

For improvement of grounds, five hundred dollars;

For repairs of buildings, one thousand five hundred dollars;

In all, thirty thousand dollars.

* * * *

FREEDMEN'S HOSPITAL AND ASYLUM.

For the Freedmen's Hospital and Asylum, Washington, District of Columbia, as follows:

For subsistence, twenty-two thousand five hundred dollars;

For salaries and compensation of the surgeon-in-chief, not to exceed three thousand dollars; two assistant surgeons, clerk, engineer, and matron, nurses, laundresses, cooks, teamsters, watchmen, and laborers, fifteen thousand dollars;

For rent of hospital buildings and grounds, four thousand dollars;

For fuel and light, clothing, bedding, forage,

transportation, medicines and medical supplies, repairs and furniture, and other absolutely necessary expenses, eleven thousand five hundred dollars;

For reading matter for patients, twenty-five dollars; in all, fifty-three thousand and twenty-five dollars, one-half of which sum shall be paid out of the Treasury of the United States and the other half out of the revenues of the District of Columbia; and hereafter the estimates for the Freedman's Hospital and Asylum shall, each year, be submitted in the annual estimates for the expenses of the government of the District of Columbia.

* * * * *

COURT HOUSE, WASHINGTON, DISTRICT OF COLUMBIA: For annual repairs, per estimate of the Architect of the Capitol, one thousand dollars.

—♦♦♦—

THE case of Ramuz v. The Southend Local Board, decided by Mr. Justice Romer on July 14, is a good illustration of the right of the owner of land adjoining a public promenade or esplanade, which the learned judge held to be, in fact, a public highway for foot passengers, and not merely a pleasure ground vested in the defendant board for the benefit of the inhabitants of Southend. The defendant board erected in 1890 a fence either on the plaintiff's land or between it and the esplanade, whereby the plaintiff was deprived of direct access from his land to the esplanade; and the plaintiff claimed an injunction to prevent the continuance of the fence or damages. Mr. Justice Romer held that, the esplanade being a public highway, the plaintiff must succeed, whether the fence was erected on the plaintiff's land or on the esplanade itself. In the former case, the erection of the fence would be a simple trespass on the plaintiff's land; in the latter, it would be an injury to the plaintiff's private right of access to the highway. The plaintiff partly based his claim upon the conveyance under which he held his property, which, he alleged, conveyed to him the soil of the esplanade subject to the public rights, but Mr. Justice Romer thought it unnecessary to decide this point. It is immaterial for the present purpose whether the soil of the esplanade belonged to the plaintiff or not; because, since the decision of the House of Lords in Lyons v. The Fishmongers Company, 46 Law J. Rep. Chanc., 68, it has been clearly settled that the right of access of an adjoining owner does not depend upon ownership of the soil of the highway. A mandatory injunction for the removal of the fence was therefore granted, and an inquiry was ordered as to the damages sustained by the plaintiff.—*Law Journal, London.*

Supreme Court of the District of Columbia.
IN GENERAL TERM.

FECHHEIMER, GOODKIND & CO.

v.

JUSTUS HOLLANDER, SAMUEL
BIEBER AND OTHERS.

1. A fraudulent purchase and subsequent assignment may be so connected by the purchaser and assignor as to constitute one transaction, and thus make the assignment a fraud intended from the beginning to affect the defrauded vendor.*
2. The statute of 13 Eliz., Ch. 5, is now in force in the District of Columbia, in its original form, by transmission from Maryland.
3. In brief terms the statute declares that every alienation of real or personal property, made to the end and intent of hindering, delaying, or defrauding the creditors of the alienor, shall be of no effect as an alienation, except when such an alienation is made to an innocent purchaser for a valuable consideration.
4. The statute contains a plain affirmation of what was already a principle of the common law, namely, that it is a right of the creditor that the debtor's means of payment shall be applied to the satisfaction of his debt.
5. For the prevention of any fraud on him the creditor's right is superior not only to the debtor's right, but to that of any third person who takes the debtor's place in such a way that he acquires no separate right of his own, by which he has no new or better claim to immunity.
6. If such third person does no act which originates in him a better right than that of the debtor, the law regards him as having the same status. In that case his innocence of any fraudulent intent will not protect him. He is treated as not having become a new owner.
7. But when a third person does some act or gives something in exchange for the debtor's property, he acquires an original right to it provided he has acted properly in undertaking to become owner. He must appear to have become owner by purchase for value, in good faith and without notice of any reason why he should not acquire the property.
8. The Court holds that under the statute of 13 Elizabeth, Ch. 5, neither the assignee nor the creditors can properly be considered purchasers for valuable consideration, under the assignment.
9. This Court is of the opinion that the decisions of the Supreme Court of the United States, rightly construed, do not hold that the creditors are to be regarded as purchasers for a valuable consideration, under an assignment for their benefit, nor that it must appear that they were participant in the fraudulent intent of the assignor in making such assignment, before the same can be held void.

Equity. No. 10,107. Decided August 8, 1892.

The CHIEF JUSTICE and Justices COX and JAMES sitting.

Mr. S. S. HENKLE for complainants.

Mr. LEON TOBRINGER for defendants.

Mr. Justice JAMES delivered the opinion of the Court:

On the 7th of July, 1886, the complainants' recovered judgment in this court against the defendant Hollander for the sum of \$1,000, with

interest at the rate of seven per cent. per annum from the fifteenth day of February, 1886, upon which execution was issued and returned *null bona*. On the 15th of June, 1886, Hollander, who had for several years been engaged in the clothing business in the city of Washington, made a deed of assignment to the defendant Bieber of all his property, excepting his household furniture, but including all the stock in trade, fixtures, etc., upon the premises known as No. 1217 Pennsylvania avenue. At the same time Hollander was further indebted to the complainants, for goods purchased on the 2d, 7th and 15th of April, 1886, to the amount of \$1,846.50; and the complainants held his note \$1,000, dated, February 15th, 1886, payable five months after date, with interest at the rate of seven per cent. per annum until paid.

The bill prays for discovery by the defendant, Hollander, concerning certain matters, and for the appointment of a receiver, and asks that in final hearing the deed of assignment to Bieber shall be declared fraudulent and void as against the plaintiffs, and decreed to be cancelled; and that out of the proceeds of the sales of the goods the amount found due to the plaintiffs be ordered to be paid.

It appears that all of the indebtedness of Hollander to the complainants was for goods sold to him by them.

The evidence satisfies us that at the time of his purchases from the complainants in 1886, the defendant Hollander had only about three thousand dollars worth of stock, and was indebted for more than six times that amount. In that condition of his affairs he made new purchases to the amount of \$19,791.71 as stated at the argument by his counsel, or to the amount of \$21,085.54 as claimed by counsel for complainants. It is shown that his experience in making sales had determined the fact that he had no ground to expect, and could not have expected to sell during that season so much as one-half of the goods newly purchased by him. Without going into details, we think it enough to say that we are satisfied that he must have contemplated, at the time of his purchase from complainants in 1886, the use of the goods, or of a large part of the goods so purchased, in applying them by assignment for the benefit of the preferred creditors afterwards actually named in the deed referred to. We do not mean to say that a fraudulent purchase of goods renders a subsequent assignment of them for the benefit of other creditors fraudulent as against the defrauded vendors; but we conceive that such a fraudulent purchase and subsequent

assignment may be so connected by the purchaser and assignor as to constitute one transaction, and thus make the assignment a fraud intended from the beginning to affect the defrauded vendor. The transaction before us appears to us to be of that character. We are of the opinion that Hollander made his purchases in the spring of 1886 with the intention, if it should become necessary, to apply them in satisfaction of preferred creditors. This, we hold, made such an assignment a fraud on the vendors of those goods.

It does not appear, however, that either the assignee or the preferred creditors knew anything about the circumstances of these purchases. In other words it does not appear that they participated in any fraud connected with the assignment. We have to deal, therefore, with the disputed question, whether an assignment for the benefit of preferred creditors may be held to be void when it was the intent of the assignor to thereby defraud his other creditors, although the creditors provided for in the deed were not participants in that intent.

On this question there is some conflict in the decisions of the state courts and in the conclusions of the text books. Mr. Burrill states that it is immaterial whether the assignee or the creditors participate in the fraudulent intent of the assignor. Mr. Waite says: "Generally speaking the subject of inquiry in these cases is the intent of the assignor or debtor, though there is authority tending to establish the rule that the fraudulent purpose sufficient to defeat the instrument must be participated in by the assignee or beneficiaries *** recognizing the general rule, elsewhere discussed, that a voluntary conveyance or gift may be annulled at the instigation of creditors without proof of an absolute fraudulent intent on the part of the donee, it would seem to follow by analogy that the cases, which hold that proof that the fraudulent intent of the debtor or assignor, is sufficient, establish the more logical and salutary rule." On the other hand, Mr. Bump, citing almost identically the same authorities, reaches an opposite conclusion.

In Cadogan vs. Kennett, Cwps., 434, Lord Mansfield said: "The principles and rules of the common law, as now universally known and understood, are so strong in every shape, that the common law would have attained every end proposed by the statutes of 13 Eliz. Ch. 5 and 27 Eliz. Ch. 4." However this may be, it has been considered important in almost every State in this country to re-enact those statutes sub-

stantially. In the process of condensation new phraseology has in some cases been used, and it has been suggested that this has to some extent led to the conflict referred to. In this District, however, the statute of 13 Eliz. Ch. 5, is in force in the original form by transmission from Maryland. Sexton vs. Wheaton, 8 Wheat., 242. For reasons which will be explained later in this opinion, we shall first consider the particular question before us as one of principle.

The provisions of the statute are substantially as follows: "For the avoiding and abolishing of feigned, covinous and fraudulent feoffments, gifts, grants, alienations, conveyances *** as well of lands and tenements as of goods and chattels *** which feoffments, gifts, etc., have been and are devised and contrived of malice, fraud, covin, collusion or guile, to the end, purpose and intent to delay, hinder or defraud creditors and others of their just and lawful actions, suite, debts, etc.

Be it therefore enacted, that all and every feoffment *** alienation, bargain and conveyance of lands *** goods and chattels *** to and for any intent or purpose before declared and expressed shall be from henceforth deemed and taken (only as against that person *** whose actions, suits, etc., by such fraudulent devises as aforesaid, are, shall or might be in any wise *** hindered, delayed or defeated) to be *** utterly void and of no effect.

"And be it further enacted, that all and every the parties to such fraudulent feoffment, gift, etc., being privy and knowing of the same or any of them, which *** shall wittingly and willingly put in use, maintain, etc., as true and done bona fide and upon good consideration; or shall alien or assign any of the things before mentioned, to him or them conveyed as is aforesaid *** shall incur the penalty and forfeiture of, etc.

Provided also, and be it further enacted, that this act or anything therein contained shall not extend to any estate or interest in lands *** goods or chattels had, conveyed or assigned *** which estate or interest is or shall be, upon good consideration and bona fide, lawfully conveyed or assigned to any person not having at the time of such conveyance or assurance, to them made, any manner of notice or knowledge of such covin, fraud or collusion, as aforesaid."

Stated in brief terms, these provisions declare that every alienation of real or personal property made to the end and intent of hindering, delaying or defrauding the creditors of the alienor, shall be of no effect as an alienation, except when such alienation is made to an in-

nocent purchaser for a valuable consideration.

The statute contains a plain affirmation of what was already a principle of the common law, namely, that it is a right of the creditor that the debtor's means of payment should be applied to the satisfaction of his debt. Although this is only a right to have an action for the enforcement of such application, it is such a relation to the property itself that a fraudulent disposition thereof is an immediate and direct injury to the creditor. His right controls the debtor.

It is only an application of this principle to say that, for the prevention of any fraud on him, the creditor's right is superior not only to the debtor's right, but to that of any third person who takes the debtor's place in such a way that he acquires no separate right of his own by which he has no new or better claim to immunity. If such third person does no act which originates in him a better right than that of the debtor, the law regards him as having the same status. In that case his innocence of any fraudulent intent will not protect him. The question is simply one of the status. In short he is treated as simply not having become a new owner. But when a third person does some act or gives something in exchange for the debtor's property, he acquires an original right to it, provided he has acted properly in undertaking to become owner at all. It is then for the first time that any inquiry into the propriety of his conduct arises, and the question to be considered is, whether, under all the circumstances, he had a right, as against the creditor, to become owner of what the debtor should have applied to the payment of his debt. This elementary principle is formulated by saying that he must appear to have become owner in the usual manner; that is to say, by purchase for value exchanged for the property in good faith and without notice of any reason why he should not acquire it. On principle then, a third person who merely takes the debtor's status assumes that status subject to whatever impaired the debtor's capacity, and it is not helped by his own innocence of any fraud in fact, and on principle his own innocence will protect him in the other cases.

This principle we conceive explains the meaning of the statute of 13 Eliz. Ch. 5, and shows that participation in the fraud of the alienor becomes a test question as to the rights of the alienee only when the latter is a purchaser for a valuable consideration. To apply this test then, the question in cases of general assignment for the benefit of creditors is, whether the assignee or the creditors can properly be con-

sidered purchasers for valuable consideration.

As a matter of fact this test has been applied in all of the well considered State decisions, and in the commercial States it has been held that the creditor does not become such a purchaser by means of the trust. In *Griffin v. Marquardt*, 17 N. Y., 30, the Court of Appeals of New York said: "An assignee in trust for the benefit of creditors is not a purchaser for a valuable consideration, however innocent he may be of participation in the fraud intended by the assignor. The uprightness of his intentions, therefore, will not uphold the instrument, if it would otherwise, for any reason, be adjudged fraudulent and void." In *Knowles v. Lord*, 4 Whart., 500 (506, 7) the Supreme Court of Pennsylvania, speaking through Seargent, J., said: "Neither the assignee nor creditors in any sense of the word purchased these goods—they were assigned in common with all the estate of the assignors; the assignors alone prescribing the terms of the assignment, the methods of appropriation, the subsequent sale of the property by the assignees to raise the funds, and the persons who were to participate in them, as well as the order and conditions according to which they were to be distributed. * * * It would be a solecism to call such a transaction a sale or such a grantee a purchaser, or to apply these terms to the creditors."

"Such a conveyance cannot be called a sale, or such creditor a purchaser. * * * A real purchaser giving value for property in the course of business innocently, and acting on the faith of possession and other apparent marks of ownership, is favored for the support of trade and encouragement of fair dealing, and may sometimes obtain a better title than his vendor. But a voluntary assignment by a debtor has never been considered as placing the assignee in any better situation in point of equity than the assignor himself was; he takes the estate subject to all outstanding equities, liens, incumbrances and dealings between the assignor and others."

We have quoted this case at some length because it demonstrates clearly the principle on which assignees and creditors are denied the protection given by the fourth section of the statute 13 Eliz. It has been said that the payment of debt constitutes a valuable consideration; this case points out that something must be given up in exchange to constitute the alienee a purchaser within the meaning of the statute.

It is worth while to observe that the later decisions in some of the States which adopted

the doctrine that an assignment for the benefit of creditors could be held void only when the creditors participated in the fraudulent intent of the assignor, indicate that a different conclusion would be reached if that question were still open. In the Governor v. Campbell, 17 Ala., 566 (571) Davgan, C. J., who delivered the opinion of the court, said: "The fifth charge was that if I. M. Fron intended to delay, hinder and defraud his creditors but the trustees and preferred creditors did not join in that intent, the deed was valid. If the question raised by this charge could be considered as an open one in this court, I should willingly hold that the court erred, for the fraudulent intent of the grantor must render the deed void as against creditors intended to be defrauded by it, unless the grantee can place himself on a ground or in a condition not to be affected by the fraud, and I know of no condition that such a grantee can assume to avoid the effect of the fraudulent intent of the grantor, unless it be that of a *bona fide* purchaser for a valuable consideration without notice. But we are satisfied that the previous decisions of this court settle the question, that the fraudulent intent of the grantor alone in a deed of trust cannot affect the rights of the creditors intended to be secured by it unless they have participated in that intent."

And in Hunt v. Weimer, 39 Ark., 70, 75, the court used this language: "Perhaps the rule which requires the grantee to participate in the fraud, in order to avoid the deed (a deed of assignment) has no just application, except in case of purchasers, or persons who have parted with some valuable right."

It is claimed, however, on the part of the defendants, that the Supreme Court of the United States has settled the rule, that in all cases of assignment for the benefit of creditors, the participation of the creditors in the assignor's fraudulent intent must be shown, in order to avoid the assignment. We have therefore to explain carefully the effect of the decisions referred to.

In the case of Clements v. Berry, 11 How., 398 it appeared that a deed of trust for the benefit of preferred creditors had been made by Berry in immediate anticipation of a judgment against him, from which the plaintiff was omitted. Mr. Justice McLean speaking for the majority of the court, said: "The trustee in this case cannot be considered a *purchaser*, as the assignment was made to him, not on purchase for a valuable consideration, but for the benefit of certain creditors." We refer to

this not as an adjudication of this question, but as evidence that the previous decisions in the cases of Marbury v. Brooks, 7 Wheat., 556, and Brooks v. Marbury, 11 Wheat., 78, were not then understood by the Supreme Court to have gone on the ground that an assignment for the benefit of creditors operated to make either the assignee or the creditors purchasers for a valuable consideration.

Those decisions, however, have since been said to have held that in attacking an assignment for the benefit of creditors, it is always necessary to show fraud on the part of the creditors as well as on the part of the assignor. This construction involves an assumption that those cases also held that the creditors were *purchasers* under the assignment. We think the court plainly distinguished creditors as not purchasers by operation of the statute. In 7 Wh., 579, Ch. J. Marshall described the assignee as "the agent of Fitzhugh (the assignor) to sell his property and pay his debts in the order prescribed by himself." That case recognized the creditors simply as creditors. Again in 11 Wh., 87, Brooks vs. Marbury, the same learned judge said: "He is the trustee or agent of Fitzhugh (assignor) to perform an act for him which his situation disabled him from performing in person. This act was entirely consistent with law, as it was to sell his property and apply the proceeds to the payment of creditors of a particular description in the first instance, and, afterwards, to creditors generally. His right to give the preference is not questioned, nor is the validity of the consideration, so far as it moved from the creditors, infected with any vicious principle." In speaking of the debt furnishing a consideration, the court was occupied in both of these cases in showing that there was valid consideration for the arrangement to apply "the proceeds to the payment" of the proceeds to the banks. That the banks became *purchasers* of the matters assigned with a view to this payment was an unnecessary hypothesis, and was not indicated by anything said in those cases.

Nevertheless, it is claimed that the Supreme Court has held in a later case that the doctrine of those two cases was that no assignment for the benefit of creditors can be held void on the ground that it was made in fraud of creditors unless creditors appear to be participant in the fraud of the assignor.

In Emerson vs. Seuter, 118 U. S., 3, the case under review was governed by the construction given to the statute of Arkansas by the courts of that State. The court announced that such must be the law of the case. After re-

ferring to the decisions of the Supreme Court of Arkansas, according to which a general assignment for the benefit of creditors could not be held void unless it should appear that the creditors participated in the fraudulent intent of the assignor, Mr. Justice Harlan added: "The rule announced by the Supreme Court of Arkansas is in harmony with the settled doctrines of this court and accords with sound reason. *Marbury vs. Brooks*, 7 Wheat., 556, 577; *Brooks vs. Marbury*, 11 Wheat., 78, 89; *Tompkins vs. Wheeler*, 16 Pet., 106, 118."

The question how far and in what cases we are bound, as an inferior court, to apply an observation, made in a decision of the Supreme Court, as a controlling authority on the point stated, may be embarrassing. Undoubtedly it is our duty to take the law from that court; but whether we must understand that the Supreme Court intended deliberately to adjudicate the matter stated by it is a different question. According to a long line of decisions, the Supreme Court in reviewing decisions concerning the effect of an assignment for the benefit of creditors, "accepts the conclusions of the highest judicial tribunal of the State as controlling." *Peters vs. Bain*, 133 U. S., 686. By the rule of that court itself, therefore, the only guide which could be followed in *Emerson vs. Seuter* was the decisions of the highest judicial tribunal of Arkansas. What that court intended to determine in the *Brooks* and *Marbury* cases was not presented for adjudication. Nor do we understand that such observations as we have referred to are stated with the purpose of laying down a rule which must be followed by the inferior courts. In view of this distinction, and with the highest respect for every suggestion from the source of this opinion, we are compelled to decline to accept as authoritative the observation that the *Brooks* and *Marbury* cases establish the doctrine, that, in all cases of assignment for the benefit of creditors, it is necessary to show that the preferred creditors participated in the fraudulent intent of the assignor, before the transfer can be held void. In those cases it was distinctly held, in the first place, that preference of certain creditors did not show a fraudulent intent even on the part of the assignor; and it was held, in the second place, that a private hope to thereby escape prosecution for a felony did not impair the assignor's right to make the preference, and therefore did not constitute the fraudulent intent which would affect the validity of the transfer. In the next place, the court held that it was only when more than a hope of escape existed; in

other words, only when there was an understanding that the assignor should actually escape prosecution, that any fraud of this particular kind could exist. The whole scope of those decisions was that the particular fraud imputed could not exist unilaterally, and could only exist by express or implied contract between the assignor and the creditors. The court was not called upon to decide, and did not decide whether an actual intent on the part of the assignor was sufficient to invalidate the assignment. Having held that a private hope of escape did not constitute a disabling fact on the part of the assignor, the court could not well decide whether an actual fraud on his part alone would be sufficient to avoid his act.

We are of opinion, then, that the Supreme Court has not decided that the creditors are to be regarded as purchasers for a valuable consideration under an assignment for their benefit, nor that it must appear that they were participant in the fraudulent intent of the assignor in making such assignment. Therefore, being satisfied that the assignment in this case was made with intent on the part of the assignors to defraud the plaintiffs, *we hold that it was void as to them, notwithstanding the preferred creditors were not participant in that fraud.*

Queen's Bench Division.

THE QUEEN v. RUSSETT.

CRIMINAL LAW—LARCENY—POSSESSION OBTAINED BY FRAUD—LARCENY BY A TRICK.

The prisoner agreed at a fair to sell a horse to the prosecutor for £28, of which £8 was to be paid to the prisoner at once, and the remainder upon delivery of the horse. The prosecutor handed £8 to the prisoner, who signed a receipt for the money; by the receipt it was stated that the balance was to be paid upon delivery. The prisoner never delivered the horse to the prosecutor, but caused it to be removed from the fair under circumstances from which the jury inferred that he had never intended to deliver it. Held, that the prisoner was rightly convicted of larceny by a trick.

Decided May 28, 1892.

CASE stated by the Deputy Chairman of the Gloucestershire Quarter Sessions.

The prisoner was tried and convicted upon an indictment charging him with having feloniously stolen, on March 26, 1892, the sum of £8 in money of the moneys of James Brotherton. It appeared from the facts proved in evidence that on the day in question the prosecutor attended Whitcomb Fair, where he met the prisoner, who offered to sell him a horse for £24;

he subsequently agreed to purchase the horse for £23, £8 of which was to be paid down, and the remaining £15 was to be handed over to the prisoner either as soon as the prosecutor was able to obtain the loan of it from some friend in the fair (which he expected to be able to do), or at the prosecutor's house at Little Hampton, where the prisoner was told to take the horse if the balance of £15 could not be obtained in the fair. The prosecutor, his son, the prisoner and one or two of his companions, then went into a public house, where an agreement in the following words was written out by one of the prisoner's companions, and signed by prisoner and prosecutor: "26th March, G. Russett sell to Mr. James and Brother (sic) brown horse for the sum of £23 0s. 0d. Mr. James and Brother pay the sum of £8, leaving balance due £14, 0s. 0d. to be paid upon delivery." The signatures were written over an ordinary penny stamp. The prosecutor thereupon paid the prisoner £8. The prosecutor said in the course of his evidence: "I never expected to see the £8 back, but to have the horse." The prisoner never gave the prosecutor an opportunity of attempting to borrow the £15, nor did he ever take or send the horse to the prosecutor's house; but he caused it to be removed from the fair under circumstances from which the jury inferred that he had never intended to deliver it.

It was objected on behalf of the prisoner that there was no evidence to go to the jury, on the ground that the prosecutor parted absolutely with the £8, not only with the possession, but with the property in it, and consequently that the taking by the prisoner was not larceny, but obtaining money by false pretenses, if it was a crime at all. The objection was overruled. In summing up, the Deputy Chairman directed jury that if they were satisfied from the facts that the prisoner had never intended to deliver the horse, but had gone through the form of a bargain as a device by which to obtain the prosecutor's money, and that the prosecutor never would have parted with his £8 had he known what was in the prisoner's mind, they should find the prisoner guilty of larceny.

The question for the court was whether the Deputy Chairman was right in leaving the case to the jury.

LORD COLERIDGE, C. J.: I am of opinion that this conviction must be supported. The principle which underlies the distinction between larceny and false pretenses has been laid down over and over again, and it is useless for us to cite cases where the facts are not precisely similar when the principle is always the same.

When the question is approached it will be found that all the cases, with the possible exception of *Rex v. Harvey*, 1 Leach, 467, as to which there may be some slight doubt, are not only consistent with, but are illustrations of the principle, which is shortly this: If the possession of the money or goods said to have been stolen has been parted with, but the owner did not intend to part with the property in them, so that part of the transaction is incomplete, and the parting with the possession has been obtained by fraud, that is larceny. This seems to me not only good law, but good sense, and this principle underlies all the cases. If, however, authority is wanted, it is to be found in two cases which we could not overrule without the very strongest reason for so doing. The first is *Reg. v. McKale*, L. R., 1 C. C. 125, where Kelly, L. C. B., said: "The distinction between fraud and larceny is well established. In order to reduce the taking under such circumstances as in the present case from larceny to fraud the transaction must be complete. If the transaction is not complete, if the owner has not parted with the property in the thing, and the accused has taken it with a fraudulent intent, that amounts to larceny." The distinction, in which I entirely concur, is there expressed in felicitous language by a very high authority. The other case is that of *Reg. v. Buckmaster*, 20 Q. B. Div., 182, which seems to me directly in point. That decision was grounded on *Rex v. Oliver*, 2 Russ. Crimes, 170, and *Rex v. Robson*, Russ. & Ry., 413, where the same principle was applied and the same conclusion arrived at.

POLLOCK, B.: I agree in the conclusion at which the court has arrived, and would add nothing to the judgment of my lord but that I wish it to be understood that this case is decided on a ground which does not interfere with the rule of law which has been so long acted on; that where the prosecutor has intentionally parted with the property in his money or goods, as well as with their possession, there can be no larceny. My mind has therefore been directed to the facts of the case, in order to see whether the prosecutor parted with his money in the sense that he intended to part with the property in it. In my opinion he certainly did not. This was not a case of payment made on an honest contract for the sale of goods, which eventually may, for some cause, not be delivered, or a contract for sale of a chattel such as in *Rex v. Harvey*, 1 Leach, 467. From the first the prisoner had the studied intention of defrauding the prosecutor; he put forward the horse and the contract, and the

prosecutor, believing in his *bona fides*, paid him £8, intending to complete the purchase and settle up that night. The prisoner never intended to part with the horse, and there was no contract between the parties. The money paid by the prosecutor was no more than a payment on account.

HAWKINS, J.: I am entirely of the same opinion. In my judgment, the money was merely handed to the prisoner by way of deposit, to remain in his hands until completion of the transaction by delivery of the horse. He never intended, or could have intended, that the prisoner should take the money and hold it, whether he delivered the horse or not. The idea is absurd; his intention was that it should be held temporarily by the prisoner until the contract was completed, while the prisoner knew well that the contract never would be completed by delivery. The latter therefore intended to keep and steal the money. Altogether, apart from the cases and from the principle which has been so frequently enunciated, I should not have a shadow of doubt that the conviction was right.

A. L. SMITH, J.: The question is whether the prisoner has been guilty of the offense of larceny by a trick, or that of obtaining money by false pretenses. It has been contended on his behalf that he could only have been convicted on an indictment charging the latter offense, but I cannot agree with that contention. The difference between the two offenses is this: If possession only of money or goods is given, and the property is not intended to pass, that may be larceny by a trick, the reason being that there is a taking of the chattel by the thief against the will of the owner; but if possession is given, and it is intended by the owner that the property shall also pass, that is not larceny by a trick, but may be false pretenses, because in that case there is no taking, but a handing over of the chattel by the owner. This case therefore comes to be one of fact, and we have to see whether there is evidence that at the time the £8 was handed over the prosecutor intended to pass to the prisoner the property in that sum, as well as to give possession. I need only refer to the contract, which provides for payment of the balance on delivery of the horse, to show how impossible it is to read into an agreement to pay the £8 to the prisoner, whether he gave delivery of the horse or not. It was clearly only a deposit by way of part payment of the price of the horse, and there was ample evidence that the prosecutor never intended to part with the property in the money when he gave it into the prisoner's possession.

WILLS, J.: I am of the same opinion. As far as the prisoner is concerned it is out of the question that he intended to enter into a binding contract; the transaction was a mere sham on his part. The case is not one to which the doctrine of false pretenses will apply, and I agree with the other members of the court that the conviction must be affirmed.

Conviction affirmed.

Circuit Court of Appeals, Eighth Circuit.

DEMPSEY v. TOWNSHIP OF OSWEGO.

1. **MANDAMUS—Municipal Corporations—Dormancy of Judgment—Limitations.**—The statutes of Kansas provide that judgments against municipalities shall be paid by taxation, and that the levy and collection of taxes may be enforced by *mandamus*. *Held*, that for the purpose of keeping a judgment alive such a *mandamus* is equivalent to the issuance of execution against a private person, and therefore that, under the State statutes relating to the life of judgments, (Gen. St. Kan., Secs. 4542, 4537, 4522, 4525, 4530,) as construed by the State courts, a judgment against a municipality becomes dormant if more than five years elapse between the issuance of two successive writs of *mandamus*, and absolutely dead if no application to revive is made or suit brought upon the judgment within one year after the expiration of the five years.
2. **LIMITATIONS—Townships—Service of Process on Officers**—Sec. 21, Code Kan., provides that the time of the absence from the state or the concealment of a person against whom a cause of action accrues shall not be computed as part of the period within which the action must be brought. *Held*, that even if this section can be held to apply where the persons elected officers of a township either fail to qualify or remove from the township, for the purpose of preventing the enforcement of judgments against it, still the question is not presented where service of process or of notice to revive the judgments could have been made, within the statutory period, upon a trustee of the township, such trustee having been duly appointed by the county commissioners, upon the ground that there were no township officers.
3. **TOWNSHIPS—Non-resident Officer—Service of Process.**—The fact that a township officer removes from the township and thereafter resides in another township of the same county, does not necessarily prevent the service of *mandamus* upon him. *Salamanca Tip. v. Wilson*, 3 Sup. Ct. Rep. 344, 109 U. S. 627, followed.
4. **MANDAMUS—Limitations—Pendency of Proceedings.**—Where a writ of *mandamus* was issued and served, but no other steps were taken for more than six years, it cannot be said that the *mandamus* proceeding was pending during that time, within the rule that limitation does not run against a party while he has a suit pending to enforce his claim.

Decided May 30, 1892.

Justices CALDWELL and SANBORN, Circuit Judges, and SHIRAS, District Judge, sitting.

In Error to the Circuit Court of the United States for the District of Kansas. Affirmed.

Mr. Justice SANBORN decided the opinion of the Court:

This was a writ of error to the United States circuit court for the district of Kansas. On the 13th day of November, 1886, plaintiff in error brought an action against the township of Oswego upon two certain judgments against the defendant, which had been assigned to him. Defendant admitted the rendition and assignment of the judgments, but pleaded that they were barred by the statute of limitations, and that this question was *res adjudicata*. Plaintiff replied that *mandamus* proceedings were commenced shortly after the judgments were rendered, and had been pending ever since, and that the citizens of the town and its officers elect had prevented any of those elected to office from qualifying since the judgments were rendered, and those elected in the year the judgments were rendered ceased to act, and left the State within a year thereafter. A jury trial was had. The jury returned special findings of fact and a general verdict for the defendant. Plaintiff and defendant each moved the court for judgment. The court denied plaintiff's motion, and entered judgment in favor of defendant, to which ruling plaintiff excepted.

The special findings of the jury, so far as they were material, were that on November 29, 1876, judgment was rendered in favor of George O. Marcy against the defendant township for \$2,600. On April 9, 1878, judgment was rendered in favor of William N. Field for \$1,504. The treasurer of the township, who was elected and who qualified in 1877, shortly after moved out of the township, and thereafter resided in the county. In 1880, J. P. Updegraph was elected and qualified as treasurer, but shortly after moved into another township in the same county. On April 10, 1882, the county commissioners of the county of Labette made a finding on petition that there were no officers of said township, and appointed John Judd trustee of the township, who qualified as such, and has ever since lived in the county of Labette, but was living outside of the township in 1884. The officers of the township were a trustee, clerk, and treasurer. The trustee and clerk elected and qualified in 1877 became non-residents of the State in 1878, and the three officers elected in 1877 ceased to act as such in 1878. No other officers than those above specified qualified from 1878 to 1886, and none were acting as such in the township during those years. Officers were elected each year, and there was an understanding generally known among the citizens of the township that the officers, if elected, would fail to qualify, and that this would

defeat the bonds on account of which these judgments were rendered. On June 16, 1877, an alternative writ of *mandamus* was issued upon the Marcy judgment, which was served July 21, 1877. On December 19, 1877, a peremptory writ was issued. On December 13, 1878, an *alias* peremptory writ was issued. On June 3, 1878, an alternative writ of *mandamus* was issued on the Field judgment, which was served on July 17, 1878. On December 15, 1885, the *mandamus* proceedings on these two judgments were consolidated by order of the court. On December 16, 1885, an information was filed in the consolidated case, and an alternative writ issued in favor of the plaintiff in error here, Edward C. Dempsey. January 14, 1886, the writ was returned served. June 10, 1886, a motion to quash the writ was filed, and the motion was on that day granted, and the writ quashed. Entries of the names of these *mandamus* cases appear on the books of the clerk of the court, with notations of continuances in nearly if not quite every year from 1877 to 1890. In November, 1886, an order was made granting leave to file an amended information, and in 1889 an order was made extending the time to file a bill of exceptions.

Under the decisions of the supreme court of the State of Kansas construing the statutes of that State on this subject, this action was barred by the statutes of limitation of that State when it was commenced. 2 Gen. St. Kan. Secs. 4092, 4095, 4542, 4537, 4522, 4524, 4525, 4530, 4531; Burns v. Simpson, 9 Kan., 666, 667; Mawhinney v. Doane, 40 Kan., 675, 678-680, 17 Pac. Rep., 44; Angell v. Martin, 24 Kan. 336; Turner v. Crawford, 14 Kan., 503; Gruble v. Wood, 27 Kan., 436, 537; Angell v. Martin, 24 Kan., 334, 335; Scroggs v. Tutt, 23 Kan., 182, 186; U. S. v. Township of Oswego, 28 Fed. Rep., 55. The statutes of Kansas provide that, if execution shall not be sued out within five years from the date of any judgment of record in that state, or if five years shall have intervened between the date of the last execution issued on such judgment and the time of suing out another writ of execution thereon, such judgment shall become dormant, (section 4542;) that such judgment may be revived by order of the court on application and notice within one year after it becomes dormant; and that, if such order is not made within one year from the time it could first have been made, it shall not be made at all unless by the consent of the debtor or his representatives. Secs. 4542, 4537, 4522-4530. In the case at bar no execution could issue against the defendant township, but the writ of *mandamus* to enforce

collection of judgments against municipalities performs the office of, and is legally the equivalent of, the writ of execution upon judgments against private individuals, since the legislature has provided that these judgments shall be paid by taxes, and the levy and collection of the taxes may be enforced by *mandamus*. It follows that under the Kansas statutes a judgment against a municipality will become dormant if the creditor permits a period of more than five years to elapse between the rendition of his judgment and the issuance of a writ of *mandamus*, or between the dates of the issuance of the two successive writs of *mandamus*. U. S. v. Township of Oswego, 28 Fed. Rep., 55. Between the 3d day of June, 1878, and the 16th day of December, 1885, no writ of *mandamus* was issued upon either of these judgments, nor was any motion or application made within one year after they became dormant, or at all, to revive them. Where a judgment has been permitted to become dormant by the neglect of the creditor to issue the proper writ for five years, and no application or motion to revive is made or suit upon the judgment brought within one year after the expiration of the five years, the supreme court of Kansas has uniformly held that the judgment becomes not only dormant, but dead, and no suit can be maintained upon it. See authorities *supra*. It is not important here that the courts of Nebraska and Ohio have adopted a different rule in the construction of similar statutes. No constitutional rights are here affected, no federal law is in question. The rights of these litigants are governed by these statutes of Kansas, and it is sufficient for this court that the highest court of that state has decided this question.

But plaintiff's counsel contends that he is excepted from the operation of these statutes and decisions by the fact that there were no officers of the township qualified and acting therein from 1878 until 1886. That the citizens of the town conspired with the officers elected during that time to prevent their qualifying for the purpose of preventing the enforcement of these judgments. That section 21 of the Code of Kansas provides: "If, when a cause of action accrues against a person, he be out of the state, or has absconded or concealed himself, the period limited for the commencement of the action shall not begin to run until he comes into the State, or while he is so absconded or concealed; and if, after the cause of action accrues, he depart from the State or abscond or conceal himself, the time of his absence or concealment shall not be computed as any part of the period

within which the action must be brought;" and that this case is so far within the spirit if not the letter of this statute that the exception there made should be applied to it. A complete answer to this contention is that the facts of this case do not raise this question. They are: That the three principal officers of the township were a trustee, clerk, and treasurer; that the treasurer, who was elected and who qualified in 1877, shortly after moved out of the township, but thereafter resided in the county; that no successor of this treasurer qualified until 1880, when J. P. Updegraph was elected and qualified as treasurer, but shortly after moved into another township in the same county; that on April 10, 1882, the county commissioners of the county made a finding that there were no officers of the township, and appointed John Judd trustee thereof, as they had authority to do under the Kansas statutes; that he qualified as such, and has ever since lived in Labette county, but in 1884 was not living in Oswego township. From this statement of the facts found it clearly appears that there was ample opportunity to serve process on one of the officers of this township during a large part of the time between the entry of the judgments and the commencement of this suit. During all of the sixth year after the date of the earlier writs of *mandamus* service could have been made on Mr. Judd, the trustee, and the judgments thus revived. That other officers who were elected did not qualify; that these officers who did qualify lived outside the township, but within the county—would not necessarily render invalid the service of notice or process upon them of officers of this township. Salamanca Tp. v. Wilson, 109 U. S., 627, 3 Sup. Ct. Rep. 344. The facts of this case do not bring it within the exception of this statute if the statute could be held to apply to such a case.

Finally, plaintiff contends that the suit on these judgments is not barred by the statutes of limitation and dormancy, because these *mandamus* proceedings upon the judgments have always been pending; and he invokes the rule that time does not run against a party under a statute of limitations while he has a suit pending to enforce his claim. It is undoubtedly true that, if the plaintiff had seasonably brought suit upon these judgments, as he has done in this case too late, time would not have run against him while such a suit was pending; but here the analogy between *mandamus* proceedings upon judgments against municipalities and the writ of execution upon judgments against creditors must not be lost sight of. Would

the fact that the creditor in a judgment against an individual issued an execution, and thereby tried to enforce and continued to try to enforce his judgments for five years, prevent the statute of limitations from running against him? Certainly not. Neither will the mere fact shown in this case that in 1877 and 1878 writs of *mandamus* were issued and served in proceedings to collect these judgments, while no further steps were taken and no other action had thereafter for more than six years, prevent the running of the statutes upon this action upon the judgments. Such proceedings, or rather such want of proceedings, do not constitute a suit pending upon the judgments within the rule invoked by plaintiff's counsel, especially in view of the fact that in these very *mandamus* proceedings before Mr. Justice Brewer, then circuit judge of this circuit, all the vital questions in this case were considered and determined adversely to the plaintiff, and the writ quashed, in U. S. v. Township of Oswego, 28 Fed. Rep., 55, in 1886.

If the plaintiff in this case has failed to collect the money that was due him it has not been because he was remediless under the law. It has been because for more than five years he issued no writ upon his judgments when he could have had a writ for the asking, and because he brought no suit, and made no application to revive his judgments, for more than three years after they became dormant, at a time when there was ample opportunity to serve notice and process upon the defendant. The judgment against him was right, and it is affirmed.

Association for the Reform and Codification of the Law of Nations.

The following is the programme of the fifteenth conference, to be held at Genoa, by invitation of His Excellency the Syndic and the Municipality, October 5 to 11, 1892.

Papers and reports are expected to be read, and discussions to take place, on the following subjects. The order in which the discussions will take place will be announced subsequently.

PUBLIC INTERNATIONAL LAW.—1. "The Beginnings of International Law Among the Greeks." Paper by Irving Jay Manatt, LL.D., U. S. Consul, Athens.

2. "Progress of International Arbitration." Paper by W. Evans Darby, LL.D., Secretary of the Peace Society (London).

3. "Arbitration or Mediation." Paper by F. J. Tomkins, LL.D., London.

4. "Africa and the Law of Nations." Paper by C. H. E. Carmichael, M. A., London.

5. "Neutralization of Commercial Highways." Discussion introduced. By His Excellency Don Arturo de Marcoartu, Senator of Spain.

PRIVATE INTERNATIONAL LAW.—1. "Conflict of Marriage Laws." Paper by Professor Gabba, Pisa.

2. "Domicile and Allegiance; or, Civil and Political Status and Extradition." Paper by William Griffith, Barrister-at-Law, London.

3. "Legislation Affecting Nationality." Paper by Thomas Barclay, L.L.B., Paris.

4. "Execution of Foreign Judgments." Paper by Professor de Rossi, Leghorn.

5. "Commissions for Taking Evidence Abroad (Lettres Rogatoires)." Paper by Avv. Baisini, Milan.

6. "Unification of Laws Relating to Notarial Acts, With a View to Their Reciprocal Recognition in Different States." Paper by Avv. Dr. Comm. Angelo Villa Pernice, Milan.

MARITIME LAW.—1. "Territorial Waters." Report on Answers to Questionnaire. By Thomas Barclay, LL.B., Paris, secretary of the committee on this subject.

2. "International Agreement as to Tonnage." Paper by C. H. E. Carmichael, M. A., London.

3. "Application of Contractual Rules to Other Branches of Maritime and Commercial Law as Already Applied to General Average in the York-Antwerp Rules," by Dr. E. N. Rahusen, Amsterdam.

4. "York-Antwerp Rules of General Average." The following resolution will be proposed by C. M'Arthur, president of the Liverpool Chamber of Commerce: "That in view of the practical inconvenience arising from the co-existence of two sets of York-Antwerp Rules of General Average, and the general acceptance by the mercantile world of the York-Antwerp Rules, as amended in 1890, the time has now arrived when the Association for the Reform and Codification of the Law of Nations may safely declare: 'That the York-Antwerp Rules, now having the authority of this Association, are the rules as amended in 1890, and thus the original rules are rescinded.'"

5. "Bills of Lading. On What Conditions are Ship Owners and Merchants Really in Agreement?" By C. M'Arthur, president of the Liverpool Chamber of Commerce.

Papers may be read, and speeches made, in the English, French, German, or Italian language, or in that of the reader or speaker.—*Law Journal, London.*

Court of Common Pleas.

GENERAL TERM.

CLARENCE M. SMITH, RESPONDENT,
v.
THE MANHATTAN RAILWAY, COMPANY,
APPELLANT.

**UNLAWFUL EJECTION OF PASSENGER FROM
TRAIN--RIGHT TO SAFE TRANSPORTATION
NOT FORFEITED BY IRREGULAR MANNER
OF ENTRY.**

1. A common carrier of passengers assumes an absolute obligation to protect them against the willful as well as the negligent acts of its agents and servants.
2. Such carrier may enforce observance of its regulations by prevention, but not by punishment of a breach already committed.
3. Such carrier may eject a passenger for present or prospective, but not for past, misconduct only.
4. A passenger, having otherwise right to safe transportation, does not forfeit it by the mere fact of getting aboard in a manner contrary to a rule of the carrier.
5. At all events, if, after such irregular boarding, the passenger leave the car and again enter it in a proper manner, he has a right to safe conveyance by that train; and for an injury suffered by him at the hands of the carrier's servants, in an attempt to eject him, he may maintain an action for damages against the carrier.

HENRY BISCHOFF, JR., P. J., and Justices ROGER A. PRYOR
and LEONARD A. GIEGERICH sitting.

Decided April, 1892.

APPEAL from judgment on verdict, and from order denying new trial. Action for injuries to plaintiff's person inflicted by defendant's servants in an attempt to eject him from the train. Having paid fare to South Ferry, plaintiff boarded defendant's train at Chatham Square station by leaping on the rear platform, in violation of a rule of the company, and rode thence to Hanover Square station. There plaintiff stepped out of the car to get his valise, which had been tossed on the platform, and then returned into the train. Thereupon defendant's servants essayed to eject him from the train, and in the attempt committed the injuries for which he sues.

Mr. Justice PRYOR delivered the opinion of the Court:

By its contract of carriage the defendant assumed an absolute obligation to protect the plaintiff as well against the willful as the negligent acts of its servants. Stewart v. RR. Co., 90 N. Y., 588; New Jersey Steamboat Co. v. Brockett, 121 U. S., 637; N. O. & N. E. RR. Co. v. Jopes, 142 U. S., 18; Croker v. RR. Co., 36 Wis., 657; Goddard v. RR. Co., 57 Me., 202; Taylor on Private Corporations, Sec. 347, 2d Ed.

But the defendant contends that because the

plaintiff boarded the train in a manner forbidden by its rules its servants were justified in inflicting upon him the injuries of which he complains.

Conceding that the plaintiff entered the car irregularly, the question is: Did that fact alone authorize the defendant to eject him?

The rule violated did not interdict access to the car, but only access in a specific mode. The plaintiff had paid his fare; he had a right to go by that train; he was in a place appropriated to passengers; and at the time of the assault he was in no way misconducting himself. The attempt to put him off was not because he was where he had no right to be, but solely because he had got in the proper place in an improper manner. The wrong of which he is accused is not in *being on* the train but in *so getting on* the train. He was not in *delict* after being in the car. Although where he had a perfect right to be, the effort to eject him was made merely because of antecedent misconduct in reaching the place for the privilege of occupying which he had paid his money. His presence on the train being rightful, no matter what the irregularity in getting there, his removal would necessarily have been wrongful.

Undoubtedly the defendant has authority to enforce observance of its regulations; but by preventing, not by punishing, the breach of them. The defendant has no power of retribution, and is incapable of compelling conformity to its rules by the imposition of a penalty. But the ejecting plaintiff for an act already accomplished would have involved a forfeiture of his right to be carried on that train. Only by present or prospective and not by past misconduct does a passenger lose his privilege.

In Steamboat Company v. Brockett, 121 U. S., 637, a passenger voluntarily put himself in a place from which the rules of the company excluded him; and, while there, was assaulted by the company's servants: Held that, nevertheless, "the company was bound to furnish him safe transportation, and to indemnify him for injuries caused by the improper conduct of its servants." The adjudication that the wrongful presence of a passenger at a forbidden locality on the vehicle does not forfeit his right to transportation, negatives the proposition that his right to carriage when aboard is lost by a breach of regulation in getting aboard.

Hitherto the argument has proceeded on the postulate that when the attempt was made to eject the plaintiff, he was on the train by virtue of an irregular entry. But, at Hanover Square station he left the train, and then re-entered it, without resistance or remonstrance from the defendant. Having originally a right to conveyance by that train, and being now on it by no breach of regulation or other misconduct, the attempt to eject him was an utterly inexcusable outrage, for which the defendant might well have been chastised by a much heavier verdict than that of which, without reason, it complains.

Judgment and order affirmed with costs.

BISCHOFF, P. J., and GIEGERICH, J., concur.

THE COURTS.

IN EQUITY.—New Suits.

August 29, 1892.

14142. Bessie Taylor v. Geo. C. Taylor. For divorce. Com. sols., Webb & Troutt.

August 31.

14143. Lucy A. Frayer v. W. H. Main et al. Creditor's bill. Com. sol., D. S. Mackall.

September 1.

14144. George Corbin, alleged lunatic. Upon petition of Commissioners D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazleton.

14145. Jennie Fisher, alleged lunatic. Upon petition of Commissioners D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazleton.

14146. Eliza Gill, alleged lunatic. Upon petition of Commissioners D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazleton.

14147. Matilda Spriggs, alleged lunatic. Upon petition of Commissioners D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazleton.

14148. Rozier R. Snyder, alleged lunatic. Upon petition of Commissioners D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazleton.

14149. Addie McKeen v. Horace McKeen. For divorce. Com. sol. Jesse H. Wilson.

September 2.

14150. Philip H. Seymour v. Mary E. Seymour. For divorce. Com. sols., Cook & Sutherland.

14151. Theodore W. Estler v. Ida C. Estler. For divorce. Com. sols., Cook & Sutherland; Defts. sols., E. & J. B. O'Neill.

September 5.

14152. Edward Champlin et al. v. John M. Proctor. For injunction. Com. sol., E. B. Hay.

14153. John T. Hurley v. Sarah S. Hurley. For divorce. Com. sol., Lemuel Fugitt.

September 6.

14154. Clara A. Phillipson v. Carl G. S. Phillipson. Com. sol., W. P. Williamson.

14155. Henry Mason v. Martha A. Bagwell et al. For account and injunction.

14156. Eugene C. Hannan et al. v. Robert Waldron et al. To enforce mechanics' lien.

September 7.

14157. Harry J. Shoemaker v. Susan Kleiber et al. Creditor's bill. Com. sol., J. J. Wilmarth.

September 8.

14158. Thomas Hardy et al. v. Chepas Harding et ux. For partition by sale. Com. sol., R. B. B. Chew.

14159. Alex. Snyder, alleged lunatic. Upon petition of Commissioners D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazleton.

14160. Susan Young, alleged lunatic. Upon petition of Commissioners D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazleton.

14161. Sophia Pendleton, alleged lunatic. Upon petition of Commissioners D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazleton.

14162. Margaret Galloway, alleged lunatic. Upon petition of Commissioners D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazleton.

14163. Clara A. Blandy, alleged lunatic. Upon petition of Commissioners D. C. De lunatico inquirendo. Com. sol. Geo. C. Hazleton.

Legal Notices.

Rule of Court.

RULE 20. * * * * Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

FIRST INSERTION.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Wilson E. Brown, Jr. vs.

George W. Brown et al. Upon motion of the complainant, by his counsel, it is this 9th day of September, A. D. 1892, ordered that the defendant, William H. Tucker, cause his appearance to be entered herein on or before the next rule day first occurring forty days after this day, otherwise the cause will be proceeded with as in case of default.

The object of this suit is for an accounting, and for the reconveyance of certain property described in said bill.

It is further ordered that the above notice be published in the Washington Law Reporter and in the Evening Star for the period of three successive weeks before said rule day.

W. S. COX, Justice.

A true copy. Test: J. R. Young, Clerk.
37 By W. E. Williams, Asst. Clerk.
[Filed September 9, 1892, J. R. Young, Clerk.
Lipscomb & Woodard, Attorneys.]

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of GIACOMO ANECHINI, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of September, 1892.

THE WASHINGTON LOAN AND TRUST CO.,
37 John B. Larner Proctor. By Andrew Parker, Asst. Sec. No. 5166. Admn. Doc. 18.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business.

This 9th day of September, 1892.

In re estate of MAGDALENA LIPPERT, dec'd, late of Washington, D. C. No. 5156. Admn. Doc. 18.

Application having been made for the probate of a paper-writing propounded as the last will and testament and for letters testamentary on the estate of said Magdalena Lippert, deceased, by Frances Miller, of Washington, D. C. Notice is hereby given to all concerned to appear in this court on Friday September 30th, 1892, at eleven o'clock a. m., to show cause, if any exist, against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter once a week in each of three successive weeks before said day.

By the Court. W. S. COX, Justice.
A true copy. Test: L. P. WRIGHT, Reg. of Wills, D. C.
36 M. A. Mess, Proctor for applicant.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Joseph W. Kain) vs.

Ole Kain. } Equity No. 14,056.

September 15, 1892.

Upon motion of complainant, by his counsel, S. A. Cox, it is this day ordered, that the defendant enter her appearance herein on or before the next rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce a vinculo matrimonii for adultery.

It is further ordered that the above notice be published in the Washington Law Reporter and the Washington Post for the period of three successive weeks before said rule day.

37 W. S. COX, Justice.
A true copy. Test: J. R. Young, Clerk,
By M. A. Clancy, Asst. Clerk.
[Filed September 15, 1892. J. R. Young, Clerk.]

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of CLARA JOHNSON, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of September, 1892.

CHARLES H. CRAGIN,
321 1/2 St., n. w.

SECOND INSERTION.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

The 7th day of September, 1892.

Susan M. White } v. No. 14083. Eq. Docket 34.

Wallace C. White. } On motion of the plaintiff, by Mr. Neill Dumont, her solicitor, it is ordered that the defendant, WALLACE C. WHITE, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is divorce of plaintiff from the bond of matrimony with the defendant.

And it is further ordered that this order be published once a week for three consecutive weeks prior to said day in the Evening Star newspaper, and in the Washington Law Reporter, both having circulation in said District of Columbia.

By the Court. W. S. COX, Justice, &c.

True copy. Test: J. R. Young, Clerk, &c.

By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 7th day of September, 1892.

James H. DeVaughn et al. } v. No. 13802. Eq. Docket 38.

William H. DeVaughn et al. } On motion of the plaintiffs, by Mr. C. E. Nicol, their solicitor, it is ordered that the defendants, WILLIAM H. DEVAUGHN, SAMUEL P. DEVAUGHN, ELIZABETH DEVAUGHN, CATHARINE SPALDING, GEORGE SPAULDING, ELIZABETH KELLY, WILLIAM KELLY, CHARLES BEACH, CARRIE L. BEACH, FANNIE SULLIVAN, CAROLINE S. DEVAUGHN JOHN H. DEVAUGHN, ALICE E. DEVAUGHN, EDGAR N. DEVAUGHN, JANE DAVIS, ELIJAH DAVIS, ALICE CROWN and WINFIELD CROWN, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a decree declaring that certain devises in the will of Samuel DeVaughn, deceased, in remainder to Martha Ann Mitchell, deceased, lapsed and became void; also to have the real estate and premises in said devise mentioned sold, and the proceeds distributed among the persons entitled thereto.

By the Court. W. S. COX, Justice, &c.

True copy. Test: J. R. Young, Clerk, &c.

[Filed September 7, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

This 8th of September, 1892.

Annie Phipps } v. No. 14015. Eq. Docket 34.

Edwin S. Phipps.

On motion of the plaintiff, by Mr. E. B. Hay, her solicitor, it is ordered that the defendant, EDWIN S. PHIPPS, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is divorce on account of desertion.

By the Court. W. S. COX, Justice, &c.

True Copy. Test: J. R. Young, Clerk, &c.

By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 8th day of September, 1892.

Vilet Larkin } v. No. 13999. Eq. Docket 33.

John F. Larkin. } On motion of the plaintiff, by Mr. E. B. Hay, her attorney, it is ordered that the defendant, JOHN F. LARKIN, cause his appearance to be entered, herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for divorce, cause, desertion.

By the Court. W. S. COX, Justice, &c.

True Copy. Test: J. R. Young, Clerk, &c.

By M. A. Clancy, Asst. Clerk.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration c. t. a. on the personal estate of PHINEAS J. STEER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day of August, 1892.

EDWARD STEER,
800 I street, n. w.

36 No. 5052. Ad. D. 18. Randall Hagner, Proctor.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of HELEN JACKSON, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 2d day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of September, 1892.

The National Safe Deposit, Savings and Trust Company,
by THOMAS R. JONES,
3d Vice President.

36 No. 5143. Ad. D. 18. Jno. C. Wilson, Proctor.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, letters testamentary on the personal estate of MARY JOHNSON, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of September, 1892.

The National Safe Deposit, Savings and Trust Company,
by THOMAS R. JONES,
3d Vice President.

36 No. 5161. Ad. D. 18. Jno. C. Wilson, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

Holding a Special Term for Orphans' Court Business,

This 8th of September, 1892.

In re estate of GUISEPPE CORTI, late of the District of Columbia. No. 5163. Administration Doc. 18.

Application having been made for letters of administration on the estate of said Guiseppe Corti, deceased, by Gregorio Corti (to issue to Michael Gatti).

Notice is hereby given to all concerned to appear in this court on September 23d, 1892, at 11 o'clock a. m., to show cause if any exist against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter, once in each of three successive weeks before said day.

By the Court: W. S. COX, Justice,

A true copy. Teste: L. P. WRIGHT, Reg. of Wills, D. C.

36 Gordon & Gordon, Proctors for app licant.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 8th day of September, 1892.

Sallie Flynn } v. No. 13,877. Equity Docket 33.

August B. Flynn. }

On motion of the plaintiffs, by A.C. Richards, her solicitor, it is ordered that the defendant, AUGUST B. FLYNNE, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a decree of divorce from the bonds of matrimony with the defendant on the grounds of desertion and abandonment for the full and uninterrupted period of more than two years.

By the Court: W. S. COX, Justice, &c.

True copy. Test: J. R. Young, Clerk, &c.

36 By M. A. Clancy, Asst. Clerk.
[Filed September 6, 1892. J. R. Young, Clerk.]

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business.**

This 2d of September, 1892.

In the matter of the estate of JOSEPH A. SMITH, late of the District of Columbia, deceased. No. 5071. Ad. D. 18.

Application for the Probate of the last Will and Testament, and for letters testamentary on the estate of said deceased, has this day been made by George H. E. White, of the District of Columbia.

All persons interested are hereby notified to appear in this court on Friday, September 30th, 1892, at 11 o'clock a.m., to show cause why said will should not be proved and admitted to probate, and letters testamentary on the estate of said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star of Washington, D. C., and the New York Herald, previous to the said day.

By the Court: A. C. BRADLEY, Justice.
36 A true copy, Teste: L. P. WRIGHT, Reg. of Wills, D. C.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
The 7th day of September, 1892.**

William E. Jones, Plaintiff, v. Daniel W. Taulmann et al., Defendants.)

On motion of the plaintiff, by Mr. E. H. Thomas, his solicitor, it is ordered that the defendants, DANIEL W. TAULMANN and CECELIA TAULMANN, his wife; GEORGE R. L. TAULMANN and GRACIE M. MAHON, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain partition by way of sale of Taulman Tract of three acres of land known as part of Youngborough in the District of Columbia, and to confirm deeds of defendants George R. L. Taulman and Gracie M. Mahon to plaintiff.

By the Court. W. S. COX, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
36 By M. A. Clancy, Asst. Clerk.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

James A. O'Donovan et al.) v. In Equity. No. 12,820.

Hugh T. Taggart, the trustee heretofore appointed by the decree passed in this cause to make sale of the real estate in the bill of complaint described, having reported to the court that he had made sale of said real estate, viz: part of lot 207 in Beatty and Hawkins' addition to Georgetown, having a front of 34 feet 4 inches on High street and extending back in parallel lines to Market street, on which last mentioned street it has a front of 32 feet, to Mary Harrington, at the rate of \$1.05 per square foot, amounting to \$4,040.90, less the sum of \$60.00 allowance for deficiency in the ground, making the net purchase money \$3,980.92.

It is, this 7th day of September, 1892, ordered by the court that the said sale be ratified and confirmed unless cause to the contrary be shown on or before the 10th day of October, 1892.

Provided that a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to said day.

WALTER S. COX, Justice.
A true copy. Test: J. R. Young, Clerk.
By M. A. Clancy, Asst. Clerk.
[Filed September 7, 1892. J. R. Young, Clerk.]**THIRD INSERTION.****This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphan's Court business, letters of administration on the personal estate of GEORGE PAGE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of August, 1892.

35 Jas. H. Smith, Proctor.
No. 5111. Admn. Doc. 18.L. C. BAILEY,
1406 15th St. n. w.**Legal Notices.****IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business,**

August 26, 1892.

In the case of William J. Miller, administrator c.t.a. of WASHINGTON C. MILBURN, deceased, the administrator c.t.a. aforesaid has with the approval of the court, appointed Friday, the 23d day of September, A. D. 1892, at 11 o'clock a.m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the administrator c.t.a. will take the benefit of the law against them.

Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star previous to the said day.

Test: L. P. WRIGHT, Register of Wills for the District of Columbia.
35 No. 4578. Ad. D. 17. Carusi & Miller, Proctors.**This is to Give Notice**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court Business, letters of administration on the personal estate of CHARLES NEALE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of August, 1892.

JAS. F. HOOD,

35 No. 5113. Admn. Doc. 18. Pacific Building, 622 F St.

This is to Give Notice

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of VIRGINIA C. MILLER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of July, 1892.

VIRGINIA MILLER,

R. Ross Perry, Proctor. 1008 New Hampshire Ave.

35 No. 5051. Ad. Doc. 18.

This is to Give Notice

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court Business, letters testamentary on the personal estate of GEORGE F. WISWELL, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of August, 1892.

MARY ELLA WISWELL,

ALBERT C. PEALE.

S. Herbert Giesy, Proctor. U. S. Geological Survey.

35 No. 5101. Ad. Doc. 18.

This is to Give Notice

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of LOUISA CATHARINE GONZENBACH, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 22d day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of August, 1892.

LOUISE BOWDLE,

Judson T. Cull, Proctor.

17th and H Sts., n. e.

35 No. 5119. Ad. Doc. 18.

The Washington Law Reporter.

ESTABLISHED 1874.

VOL. XX.

[WEEKLY]

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WASHINGTON, D. C., - - - SEPTEMBER 22, 1892

Acts and Joint Resolutions of the 52d Congress, relating to District of Columbia matters, continued from Nos. 35 and 37 of Vol. XX of The Law Reporter.

An act to amend an act entitled "An act to incorporate the Brightwood Railway Company of the District of Columbia."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the charter granted to the Brightwood Railway Company by an act of Congress approved October eighteenth, eighteen hundred and eighty-eight, be, and the same is, amended as follows:

"That within six months from the date of the approval of this act, the said Brightwood Railway Company shall equip and operate its existing line with the overhead trolley system of electric motive power, and shall thereafter maintain the road in first-class condition. That the road shall be supplied entirely with new cars of the most approved pattern, which shall be run as the public convenience shall require, but not less frequently than one car every fifteen minutes from each end of the line, between five o'clock ante meridian and twelve o'clock midnight.

"SEC. 2. That within twelve months from the date of the approval of this act the said Brightwood Railway Company shall extend its tracks to the District line, as provided in the original charter of said company, and shall operate the new portion of the line in the same manner and under the same conditions as hereinbefore provided for the operation of those portions of the road already built. The said company shall also construct and maintain a branch line, beginning at a point, to be located by the Commissioners of the District of Columbia, west of the Baltimore and Ohio Railroad track on Fifth street in Takoma Park; thence along Fifth street Umatilla street; thence west along Umatilla street to and across Piney Branch road, and thence to Brightwood avenue by such route as the Commissioners of the District of Columbia shall approve. Said branch line

shall be operated by the overhead trolley system; and when the company lays its double track from Brightwood to Takoma Park said tracks shall be laid on one side of the said road; the cars used shall be first-class in every respect, and the schedule of the running of cars shall be subject to the approval of the District Commissioners, but cars shall be run as often as one every fifteen minutes between the hours of five o'clock ante meridian and twelve o'clock midnight. Work on the said branch road shall be begun within two months and completed, with cars running thereon, within one year from the date of the approval of this act.

"SEC. 3. That in the event that the company should not be able to come to an agreement with the owner or owners of any land through which the said road may be located to pass, or upon which any necessary buildings may be required to be located, proceedings for the condemnation for the use of the company of so much of said land as may be required, not exceeding one hundred feet in width, for its roadway, and of so much as may be necessary for buildings, and so forth, may, be instituted in the usual way in the supreme court of the District of Columbia, under such rules and regulations as said court may prescribe for such purposes.

"SEC. 4. That any failure to comply with any of the provisions of this act shall work a forfeiture of the original charter of the said Brightwood Railway Company. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

"SEC. 5. That Congress reserves the right to alter, amend, or repeal this act."

Approved, July 26, 1892.

REPLEVIN—Action on Bond.—Where a party commences an action in replevin, obtains possession of the property in dispute, and then voluntarily dismisses his suit, without prejudice, but still retains the property secured under the order of delivery, the defendant may maintain an action upon replevin bond, if the title to such property be in him, and recover damages for the value of the property so taken. *McKey v. Laufin, Kans., 30 Pac. Rep., 16.*

REPLEVIN—Cattle Held in Quarantine.—When an action of replevin is brought by the owner to recover possession of cattle held by a sheriff under an order issued by the live stock sanitary commission requiring him to hold said cattle in quarantine, said order constitutes a sufficient *prima facie* justification of the sheriff's refusal to return said cattle to the owner during the quarantine period, and until the expense of holding the same in quarantine is paid. *Hardwick v. Brookover, Kan., 30 Pac. Rep., 21.*

APPEAL—Presumption.—Where a number of objections are filed to the entry of judgment for the delinquent taxes, and the county court sustains the objections generally, and the bill of exceptions fails to preserve all the evidence, it will be presumed, on writ of error, that there was evidence sufficient to sustain some of the objections. *People v. Stone, Ill., 31 N. E. Rep., 502.*

Circuit Court, District of Maryland.

YOUNG ET AL. v. BALTIMORE COUNTY
HEDGE & WIRE FENCE CO.

1. PATENTS FOR INVENTIONS—Limitation of Claim—Hedge Fences.—*Patent No. 264,085 July, 21, 1882, held*, to be for a wire extending along the base of a hedge near the ground to prevent the passage of small animals before the shoots of the hedge are grown.
2. SAME—Novelty: *Held*, that the patent is void for the want of patentability, it being old to use such a wire to keep the plants in position, and to give the hedge increased lateral strength, and it being old to use a wire along the base of an ordinary fence to prevent the passage of small animals.

In Equity. Decided June 21, 1892.

Bill by Wesley Young and the Maryland Hedge & Wire Fence Company against the Baltimore County Hedge & Wire Fence Company for infringement of patent. Bill dismissed.

Mr. Justice MORRIS, District Judge, delivered the opinion of the Court:

The bill of complaint in this case alleged the infringement of four patents, but the bill has been dismissed as to all except the patent to Wesley Young, No. 264,085, dated July 21, 1882. That patent is for an improvement in "plashed hedges." The claim is a narrow one, for a single and simple improvement. The patentee, Young, describes the method of plashing hedge fences as practiced at the date of his application, which he says is by bending over the plant in the line of the fence, the bending taking place in the root, and securing the first plant in its bent position by fastening it to a stake, then a piece of wire is passed under the first plant quite near the ground and crossed and twisted around the next plant, and in like manner around as many succeeding plants as the wire is capable of holding in their proper relative positions; it being intended that the wire shall cross the plants approximately at right angles to their inclined positions, and so that every plant is held down in its inclined position and in the plane of the fence. In describing this method, which he states was then in use, he says: "Or one or more of the lines of wire may be stretched first, and the plants bent down and secured in position by attaching them to them to the wire." He further says:

"The present invention looks to the still further development of this branch of industry, and has for its object to provide a hedge fence which from the time it is first plashed will present a strong and impassable barrier to all ordinary stock which is permitted to run at large, and the proper growth of which hedge

will not be interfered with by the causes ordinarily existing. * * * In order to give the fence the requisite degree of lateral strength at the start, I apply a continuous horizontal line or lines of wire or other material along it from end to end, securing the said line or lines to the plants by staples, nails or loops or other suitable fastenings, as shown in the drawing, or by interweaving it with the plants as shown. I preferably apply two lines of wire, one near the upper ends of the plants after they are plashed and cut off to the proper height, and one near their base, as represented in the drawing, though other intermediate lines of wire may also be employed if thought necessary. I also prefer to employ barbed wire, as that affords additional effectiveness as a barrier to stock, but plain wire will answer reasonably well. * * * The lower wire is indispensable, for by its aid the openings between the plants are closed at the bottom from the start, and small pigs are prevented from passing through, thereby enabling the side shoots of the plants to extend out and close the openings effectively, making a firm close fence, as soon as the plashing is done. This lower wire should be placed quite near the surface of the ground to be most effective. It will be seen that additional lateral strength of the fence is secured by the employment of the two lines of wire, one at the top and another at the bottom, with or without intermediate lines, and secondly, that the effectual closing of the lower intervals of the fence to enable the shoots to properly develop, is accomplished by the lower wire alone. I am aware that it is not new to place a line of barbed wire along the bottom of a post and board fence for the purpose of preventing small animals from passing under the fence; also that it is not new to interweave in the upper portion of a live hedge fence withes or branches not a part of the growing fence, and such construction I do not claim as my invention. Neither do I claim a hedge fence on which the plants are plashed together by means of a continuous line of wire wound around them from one to another, near the upper ends, as shown in patent to D. M. Kirkbridge, May 30, 1876."

The claims are:

(1) A hedge fence composed of live plants, bent down in the plane of the fence, and held in place by suitable fastenings, and having a line of wire extending along the base of the plants near the ground, said wire being secured to the plants, and operating to prevent the passage through the spaces between the plants of small

stock before said spaces have become closed or protected by the growth of the shoots, substantially as described.

(2) A hedge fence composed of live plants bent down in the plane of the fence, and held in place by suitable fastenings, and having a horizontal line of wire extending along the upper portion of the plants, and secured thereto, to give increased lateral strength, and having also a horizontal line of wire extending along and secured to the bases of the plants, for preventing the passage through the spaces between the plants of small stock before said spaces have become closed or protected by the growth of the side shoots, substantially as described."

The claims of the original application in the Patent Office were broader, but upon objection and a citation from the *Gardener's Chronicle* for 1873, p. 1115, and for 1875, p. 458, the applicant modified his claim so as only to cover a line of wire extending along the base of the plants near the ground, and secured to the plants, and operating to prevent the passage of small animals through the spaces between the plants before the spaces have become closed by the growth of shoots. The *Gardeners' Chronicle* for 1875 describes an improvement in hedge culture by driving small stakes along the center of the hedge six to eight feet apart, to which a line of wire is stapled and drawn tight by being attached at the ends to gateways when they occur in the line of the fence. It is said :

"The principal uses and advantages of the wire thus inserted are to constitute a permanent backbone, as it were, to the hedge, thereby preventing animals, as cattle and horses, from pushing themselves through, which they are very liable to do at all thin and weak parts of a hedge. When once the hedge grows over and fairly covers the wire, the posts are of little further use, and do not require renewal, as the fence itself sufficiently supports the wire, and keeps it ever afterwards in its place."

The only differences between what is described in the publication from which the above is taken and what is claimed in Young's patent is that by Young's method it is stated that the wire is to be used earlier in the life of the hedge—that is to say, when it is first plashed—and that the lower wire is to be placed quite near the ground, so as to intercept small animals before the lowest shoots are sufficiently grown to make a barrier. It is not said in Young's method whether the wires are to be stretched taut between convenient posts or not; but it is obvious that in practice this would be done if practicable. In Young's method the wires are to be stapled or

otherwise suitably fastened to the plants, and in the published method the wires were at first to be stapled to the small posts, but in the end the plants supported the wire.

At the threshold of the consideration of the patentability of these matters connected with growing hedge fences, it suggests itself that the plashing of the hedges, that is, the bending over of the plants at the roots in the line of the fence, all at the same angle, and securing them in that position, and the discovery of the fact that growing in that position the shoots tend to spread out lower down, and the shoots of the lower inclined plants tend to interlace with those of the upper plants so as to form an effective, vigorously growing hedge fence, all this to the first discoverer, and also the best means of accomplishing it, might fairly be matters requiring invention, and proper to be protected by a patent. But it also suggests itself that, after this method of growing a hedge was known, the use in connection with it of anything in such common use and so obvious as a line of wire along the hedge, or interweaved in the hedge, for the purposes of a fence, merely, and to prevent animals from passing through where the hedge was too weak itself to prevent them, could not be a discovery or require invention.

It is said that no one before Young systematically used the lower wire for this purpose, or taught the public how essentially important it was to the proper growth of the lower shoots of the plants that they should be thus protected, and no one before Young, it is said, for this reason, was uniformly successful in growing, at a moderate cost, an effective hedge fence. But this is not showing Young to have been an inventor, but merely that he does systematically and thoroughly, and with a sense of its importance, what others had the means of doing, and knew how to do, but did not appreciate the importance of. Just as a man may know that a certain treatment is good for his fruit trees, but does not obtain the best results because he does not use it intelligently at the right times and in the best manner.

The use of a wire along the base of an ordinary fence is admitted in the specification to be a common means of preventing the passage of small animals. Such a wire would be fastened in any suitable way, either to the fence itself or to stakes put down for that purpose. And it would either be stretched taut or interweaved, as might be convenient. It would, with many ornamental fences or palings, answer the double purpose of preventing the animals passing in

and out, and also of preventing the injury to the fence itself from the abrasion and forcing asunder which results when animals are frequently pushing through and enlarging an opening. In the growing hedge fence, the lower wire performs exactly these same uses. It is more important, and the consequences of neglecting its timely use are more serious, just to the extent that a growing hedge is more easily spoiled and more difficult to repair than an ordinary dead fence. In Young's patent the only use claimed for the lower wire is as a defense against animals, and he cannot be allowed to claim it generally, as he abandoned and erased from his application those claims in which he had attempted to cover the use of the wire to keep the plants in position, and to give the hedge increased lateral strength. He was obliged to make this abandonment, because he recited in his specification that one of the known ways of securing the plashed plants in position was by attaching them to a stretched line of wire, and the *Gardener's Chronicle* disclosed that it was old to use a stretched wire to give increased lateral strength while the hedge plants were young and weak.

The decree of 19th June, 1891, in the Circuit Court of the United States for the Western Division of the Western District of Tennessee, called in this case the "Memphis decree," adjudges this patent to be valid, but confines it to a horizontal wire, "secured to the plants without any extraneous support." If the claim of the patent is to be read with this restriction, then the respondents in this case do not infringe, as it is proved that the horizontal wires used by them remain stretched taut between posts or trees or gateways, or whatever stationary objects in the line of the fence they can be conveniently attached to, and, after they are thus stretched, the plants are inclined and secured in their inclined position by being fastened to the stretched wires, using the diagonal wires only when necessary to keep a plant in position which was more than ordinarily stiff and refractory. But I think in the present case it has been shown by the complainant's witnesses, and notably by their expert witness, See, that the end attachments of the horizontal wires have no bearing upon the construction of the claims of the patent; and I conclude, as does complainant's witness, that at least a preliminary use of a post, or some fixed object to which the ends of the wire might be fastened, is clearly implied by the specification of the patent itself.

Upon the whole case, my conclusion is that, in

view of what had been before done, the claim for a line of wire secured to the plants near the ground, to prevent the passage of animals, is void for want of patentability; and that, however beneficial its timely use as pointed out by Young may be, it is an improvement in the art of hedge making, resulting, not from invention or discovery, but from the more systematic and thorough attention to the fact that the young shoots at the base of the plants ought to be protected against small animals until they are sufficiently grown to be a barrier themselves.

Bill dismissed.

Supreme Court of New York.

GENERAL TERM.—THIRD DEPARTMENT.

WILLIAM BRADLEY, RESPONDENT,
v.
MARGARET SHAFFER AND ROBERT
SHAFFER, APPELLANTS.

AMENDMENT AFTER VERDICT—LIABILITY FOR TORTS OF CHILD.

Decided July, 1893.

HON. STEPHEN J. MAYHAM, P. J., JNO. R. PUTNAM and D. CADY HERRICK, sitting.

APPEAL by defendants from a judgment entered on the verdict of a jury.

Mr. Justice PUTNAM delivered the opinion of the Court:

This is an appeal from a judgment in favor of plaintiff, entered February 4, 1891, and from an order denying a motion made to set aside the verdict and grant a new trial because the verdict is against evidence, and the damages excessive, and also from an order allowing an amendment to the complaint after the verdict. The action is for wrongfully and maliciously enticing plaintiff's daughter from the home of her parents to defendants' house, and there keeping her under the control of defendants against the wish and consent of plaintiff. She was seduced by defendants' son in the house of defendants, while thus kept away from her own parents. The complaint in this case, after stating the plaintiff's alleged cause of action, contained the following prayer for judgment: "Whereupon the plaintiff and his family have been brought into disrepute * * * to his damage \$5,000, for which amount plaintiff demands judgment against the defendant Margaret Shafer, and costs." The trial Judge, in his instructions to the jury, remarked: "The defendant, Margaret Shafer, who is the real defendant here, although her husband is joined

with her; that is because, as the law was when this action was brought, a married woman could not be sued for a tort alone, * * * so that in this case the husband was made a party only because the law required, in order to maintain the action, that he should be joined with his wife, she being a person against whom the tort is alleged." The case states that "the jury returned a verdict in favor of the plaintiff for \$2,500 damages. Afterwards, on motion of plaintiff, the court ordered "that the prayer of plaintiff's complaint be, and the same is hereby, amended to conform to the facts proven, and so as to demand judgment for damages against both defendants." I think that this order was inadvertently granted by the court. It was made after the rendition of the verdict. The jury, in bringing in a verdict of \$2,500 for the plaintiff, rendered it in pursuance of the prayer of the plaintiff's complaint against the defendant, Margaret Shafer. They did not and could not render such a verdict against Robert Shafer for the reason that no such verdict was claimed in the complaint. Hence the order of the court has the effect of creating a verdict against the defendant, Robert Shafer, that was not in fact given by the jury. It is well settled that after a verdict the complaint cannot be amended so as to increase the amount claimed. *Bowman v. Earle*, 3 Duer., 695; *Decker v. Parsons*, 11 Hun., 296; *Dox v. Dey*, 3 Wend., 356; *Corning v. Corning*, 6 N.Y., 104; *Pharis v. Gere*, 31 Hun., 443. In this case no recovery was demanded of the defendant Robert in the complaint, but the demand for judgment was expressly made against the defendant, Margaret Shafer alone, and the complaint so remained until after the rendition of the verdict. The effect of the order was to increase the amount claimed from the defendant Robert from a nominal sum to \$5,000. Within the above authorities this order was unauthorized. This action was begun in 1889, hence chapter 51, and chapter 248 of the laws of 1890 did not apply" (see *Hill v. Duncan*, 110 Mass., 238, 239). Therefore the husband was a proper and necessary party defendant in the action, and judgment should be collected from him. *Fitzgerald v. Quann*, 33 Hun., 652-658, 109 N.Y., 441, 17 N.E. Rep., 354; *Mangam v. Peck*, 111 N.Y., 401, 18 N.E. Rep., 617; *Bennett v. Bennett*, 116 N.Y., 597, 23 N.E. Rep., 17. The complaint in this case should have been amended before the verdict. Doubtless the court, under section 723 of the Civil Code, on motion, could have allowed such an amendment at any time before the submission of the case to the jury. After the verdict, as we have seen,

the court possessed no such power. The effect of such an amendment and of the order in question was to make a verdict, for the jury never in fact rendered it. Therefore, as to the defendant Robert Shafer, the order in question and the judgment must be reversed, and a new trial granted. But as we have seen, the husband is a necessary party defendant. He is liable to pay the judgment. *Fitzgerald v. Quann*, 33 Hun., 656-658. He is jointly liable with his wife. It is not a case where a separate verdict against either would be proper. Hence the orders and judgment should be reversed, and a new trial granted as to both defendants. See *Pollock v. Webster*, 16 Hun., 104, and kindred cases.

It is urged by defendant that there should be a new trial, because the damages were excessive; that the seduction of plaintiff's daughter by defendants' son did not properly enter into the question of damages; that for that injury plaintiff has a cause of action against George Shafer. The trial court instructed the jury that they had no right to give plaintiff a verdict because defendant's son seduced the girl, unless they found that the mother did connive, did aid, or did assist in bringing about the seduction, and either originally enticed the daughter away from the father for that purpose, or subsequently entered into some arrangement to bring it about. No exception was taken to the charge of the judge. Had an exception been taken, I am not prepared to say that, if the jury believed all that the witness, Mary Bradley, testified to, they might not properly consider her seduction on the question of damages. According to this witness, Margaret Shafer persuaded, and in fact, almost coerced her to leave and remain away from her parents at the house of said defendants. Margaret knew of the seduction of the witness by her son the day it first occurred. She knew that the witness and her son were having unlawful commerce in her house. She knew the bad character of her son. Yet she prevented the witness from returning to her parents and knowingly kept her exposed to the solicitations of her son, making no effort to put a stop to the immoral intercourse going on. Margaret absented herself for days, leaving her son and the witness alone together. I am inclined to think that there was evidence in the case from which the jury might, if they believed the statements of the witness, Mary Bradley, as they could, find that the defendant, Margaret Shafer, having induced this young girl to leave her parents and sojourn at her house under her care and charge, know-

ingly connived at the commerce between the girl and her son, carried on without objection on her part. I am, therefore, not prepared to say that the matter was not properly submitted to the jury by the learned trial judge, or that the jury, believing the statements of the witness, Mary Bradley, could not consider the seduction on the question of damages, and hence that the verdict should be set aside on the ground that the damages were excessive. But for the reasons above stated the orders and judgment should be reversed, and a new trial granted, costs to abide the event.

HERRICK, J., concurs.

MAYHAM, P. J.—I concur upon the ground first stated in the written opinion.

Supreme Court of Pennsylvania.

KING'S ESTATE.

A paper containing nothing more than a naked promise by a decedent to let a legacy in her will as there made "stand and remain," for the legatee's benefit, but which legacy was afterwards revoked by a later will in which the legatee was not mentioned, is not such a contract as can be enforced against a decedent's estate without evidence to prove a consideration for the promise.

Decided July 12, 1892.

APPEAL of Ann C. Gast from the decree of the Orphan's Court of Lancaster County, dismissing her exceptions to the report of Charles R. Kline, auditor, appointed to report distribution of the funds in the hands of Solomon King and George P. King, executors of the last will of Catharine King, deceased.

The auditor found that Catharine King died September 15, 1889, leaving a last will and testament by which, after directing her just debts and funeral expenses, including a tombstone, to be paid, she bequeathed all the rest and residue of her estate to her brothers and the children of a deceased brother. The executor's account showed a balance in their hands of \$3,613.30. Mrs. Ann C. Gast presented a claim upon this fund, founded on a paper executed while decedent boarded with Mrs. Gast, and which reads as follows:

February 1st, 1879.

Received this day from Mrs. Ann Charlotte Gast, the sum of one dollar in full for all my services rendered her in her house up to this date, and I promise and agree to let the legacy in her favor in my will as now made to stand and remain for her benefit at my death.

Witnesses present, } her
J. B. KAUFFMAN, } CATHARINE KING.
CHRISTIAN GAST. mark

The amount of the legacy referred to was proven to be three hundred dollars. It was

admitted that while boarding there Catharine King paid her bill regularly. It was contended that this paper, supplemented by the evidence produced before the auditor, constituted a contract to pay on the part of the decedent, the consideration for which was services performed or to be performed, by Mrs. Gast.

The auditor, citing Wall's Appeal, 111 Pa., 460, and Miller's Estate, 136 Id., 239, disallowed the claim, saying, *inter alia*: "The paper is a mere promise by Catharine King to let a legacy in her will, as then made, stand; whether as a gift or in payment for some debt is not stated, and it clearly does not show on its face to be in payment for services to be rendered thereafter. Does the testimony produced, taken in connection with the paper, constitute such a contract as can be enforced against the estate? We think not. There is no evidence showing that any services had been performed before the execution of the paper, or that the promised legacy was in payment of such services, nor does the paper show such consideration. Some of the evidence shows services rendered after the execution of this paper, but the auditor would not be justified in holding that the service was rendered in consequence of an agreement or contract made before or at the time the paper was executed, in the absence of any testimony to sustain such finding."

To this report Ann C. Gast excepted, because the auditor refused to allow her claim, with interest. This exception was dismissed by the court, Patterson, J., and the report confirmed. Whereupon the exceptant took this appeal, assigning as error this action of the court.

Mr. Justice STERRETT delivered the opinion of the Court:

Appellant's claim is based solely on what is claimed to be a valid and binding promise of the decedent to leave her by will a legacy of \$300. The alleged agreement is evidenced in the main, by the last clause of a paper which reads as follows:

"Received this day from Ann Charlotte Gast the sum of \$1 in full for all my services rendered her in her house up to this date, and I agree to let the legacy in her favor in my will, as now made, stand and remain for her benefit at my death."

This receipt, dated February 1, 1889 [1879], is signed by the decedent, Catharine King, who died September 15, following. Testimony was introduced to prove that, prior to giving the receipt, Miss King had made a will, then in her possession, giving a legacy of \$300 to appellant; but for some unexplained reason that testamen-

tary paper was destroyed or revoked, and by her last will and testament nothing whatever is given to appellant. Hence the complaint that the promise of the testatrix "to let the legacy in her favor * * * stand and remain for her benefit," etc., was not kept.

It was, of course, incumbent on appellant to prove a consideration for the promise on which she relied. There is nothing in the paper itself, nor in the evidence *dehors* the instrument, to show that the legacy was promised in consideration of services previously rendered or to be performed thereafter. At most the paper contains nothing more than a naked promise of the decedent to let a legacy, in her will as then made, "stand and remain" for appellant's benefit; whether as a gift, or in payment for services, or something else, is not stated therein, and does not otherwise sufficiently appear. The learned auditor and court below were right in holding that the paper in question, either alone or in connection with other evidence, was insufficient to establish such a contract as can be enforced against the estate. There was no proof of the rendition of any services before the execution of the paper or that there was any consideration, whatever for the promised legacy. There was some evidence of services rendered after the paper was signed, but there was nothing to warrant a finding that they were rendered in consideration of the legacy. As was said in Wall's Appeal, 111 Pa., 464, such a contract can only be enforced when it is clearly proved by direct and positive testimony, and where its terms are definite and certain. The evidence proves nothing more than a voluntary intention of the testatrix to let the legacy in favor of appellant stand as it then was in her will. There was nothing whatever to prevent the subsequent change of that intention. The assignments of error are not sustained.

Decree affirmed and appeal dismissed with costs to be paid by appellant.

ASSIGNMENT—Distribution of Assets.—Under a deed of assignment, which provides that certain property belonging to the assignors individually, and as members of a certain firm, shall be divided ratably among the individual and firm creditors, the firm creditors to be "first" paid out of the firm assets, and the individual creditors out of the individual assets, the surplus of the assets of one class, if any, must be applied to a deficiency in the other. *Home Sav. Bank v. Pierce, Mass., 31 N. E. Rep., 483.*

Baltimore City Court of Appeals.

MAYOR AND CITY COUNCIL
v.
WM. T. GRIEVES.

Chief Justice HARLAN delivered the opinion of the Court:

In 1883 the Mayor and City Council of Baltimore, by ordinance No. 44 of that year, declared all that part of Centre Market lying between Lombard and Pratt streets "a wholesale market for country produce brought into the city in wagons and cars."

In 1891, by Ordinance No. 116 of that year, it was enacted "That the annual rental for a stand in the wholesale market for country produce heretofore established within the limits of Centre Market by Ordinance 1883, No. 44, shall be for brokers and commission merchants and others who deal in country produce not raised or prepared by themselves the sum of \$50; and for persons who sell only country produce raised or prepared by themselves and from wagons or carts owned by them the rental shall be \$5—the said rentals to be paid in advance." Sec. 1. "That any person renting a stand in or the privilege to use said wholesale market, shall procure a certificate of such rental from the clerk of the market, which shall set forth that the party so renting is entitled to a stand in said market and to the privilege of using the same; but the location of carts and wagons, and the particular stands to be occupied by them, shall be from time to time and always subject to the control of the clerk of said market." Sec. 2. "That any person selling in or using said market without being entitled to a stand therein shall be liable to a fine of twenty dollars for each and every offense. (Sec 4.)

The defendant is a broker or commission merchant dealing in country produce not raised or prepared by himself, and having sold produce consigned to him from certain wagons or carts within the limits of the said wholesale market at various times during the three months next prior to the bringing of this suit, without having paid the so-called advance rental \$50, or procured a certificate of rental from the clerk of Centre Market, the city has brought this action to recover \$50, as upon an implied contract for use and occupation. It is manifest that there can be no recovery upon this theory if the city has transcended its legislative powers in enacting the ordinance fixing the so-called rental. The sole power of the city with reference to markets is given by two sections of Article IV of the Code of Public Local Laws.

One of these, section 671, confers authority "to erect and regulate markets," and the other, section 678, provides that "the Mayor and City Council may lease, sell or dispose of the stalls or stands in any market in any manner, or for any term they may think proper."

Under section 671 the city can establish markets and make reasonable police regulations for the same, but has no power to raise revenue under the guise of exercising the police power; *Vansant vs. Harlem Stage Co.*, 59 Md., 334; *State vs. Rowe*, 72 Md., 548. The plaintiff's counsel does not rely upon this section, but insists that the ordinance can be supported under section 678.

"It is well established law that municipal authorities can exercise no powers that are not in express terms, or by fair and reasonable intendment conferred upon them. In the case of *St. Mary's Industrial School for Boys vs. Brown et al.*, 45 Md., 332, this court adopts the language of the Supreme Court of the United States in *Minturn vs. Larue*, 23 Howard, 435, that: 'Any ambiguity or doubt arising out of the terms used by the legislature must be resolved in favor of the public. It must be by express grant or by fair and reasonable intendment, that a municipal corporation can get authority over the rights and property of the citizens; else, 'the trades and business of the people would be at the mercy and be dependent upon the caprice of those who might exercise municipal power, instead of being regulated by the general law of the land.' And it is 'the plain duty of the courts to see that the corporate authorities do not transcend the authority delegated to them.'" So say the Court of Appeals in *State vs. Rowe*, 72 Md., 549, 550, and bearing these principles in mind, the only question for the court's consideration seems to me whether the grant of power "to lease the stalls and stands in any market in any manner, and for any term they may think proper," can fairly and reasonably be considered, having regard to the terms employed and resolving any doubt or ambiguity in favor of the public, as conferring upon the Mayor and City Council authority to fix by ordinance an annual charge to be paid in advance by all persons of a certain class who wish to make use of a certain open space, set apart as a "wholesale market," without such persons acquiring any title in or right of possession to any particular stall or stand or location or defined portion of such space. The undisputed proof in this case is that the wholesale market contains no physical structures whatever in the nature of stalls or stands, nor any

marks or boundaries by which particular localities are defined as stands. The ordinance itself does not define the portion of space which shall be regarded as "a stand," and to the use of which certificate holders shall be entitled. Whether each such holder, be he producer or broker, shall have the right to occupy sufficient space for one wagon or one hundred is not determined. The clerk of the market has the right to control the location of carts and wagons, but this is necessarily the location they are to occupy *within the space*. He has no power to cause those who have occupied to leave the wholesale market in order to make room for others, nor to exclude any wishing to bring in their carts or wagons from doing so. The number of those entitled to "a stand in, or the privilege of using, the wholesale market," may be increased at any time at the will of the city and the increase may be so great as to diminish largely, or even practically to destroy the value of the right. It is in proof that there are occasions now when the space is so crowded as not to afford room for all who at the time desire to use it.

It seems plain to me that under the power to create tenancies as to particular stalls, stands or localities in the markets the attempt has been made to create a general easement or right of use as to this wholesale market, to be enjoyed by all who pay the required annual charge.

The distinction between a tenancy and an easement is so well recognized that I am clearly of opinion that this ordinance cannot be regarded as being within the power given to the Mayor and City Council by the legislature, and must therefore be treated as invalid.

It has been suggested that the defendant, if not liable for use and occupation, is liable as a trespasser upon the city's private property, and that the court should assess the damages at \$50; but, the case having been brought as *in contract*, and announced at the trial, to test the validity of the ordinance, and the court having determined that question against the city, it does not commend itself to my judgment to allow the cause of action to be amended under these circumstances, so as to hold the defendant liable *in tort*.

The verdict will be for the defendant and the judgment below affirmed.

WE shall be very glad indeed to see Lord Herschell back on the woolsack. He is a man for whom every lawyer has an unbounded respect and admiration. We venture to prophesy that under the new Chancellor no more will be heard of the recent complaints of jobbery and nepotism.—*London Law Times*.

Supreme Court of New York.
GENEAL TERM—FIRST DEPARTMENT.

BERNARD BEER, PLAINTIFF,
 v.
 LIONEL SIMPSON, DEFENDANT.

STATUTE OF LIMITATIONS.—ACTION ON FOREIGN JUDGMENT.

The plea of the Statute of Limitations to an action upon a foreign judgment goes to the remedy only, and the *lex fori* prevails. This is the settled rule in this State, except in so far as it has been changed with regard to actions against non-residents by section 390 of the Code of Civil Procedure.

Decided June, 1892.

Hon. CHARLES H. VAN BRUNT, P.J., MORGAN J. O'BRIEN
 and EDWARD PATTERSON, JJ., sitting.

DECISION upon an agreed statement of facts.
 Mr. Justice PATTERSON delivered the opinion of the Court:

The question arising on this record is presented for determination on an agreed statement, submitted under section 1279 of the Code of Civil Procedure. It appears that on the 22d day of December, 1883, one Pohalski recovered a judgment against the defendant in the District Court of Colorado for the county of Arapahoe, that being a court of record, for the sum of \$1,761.20, on which judgment execution was issued within one year from the entry thereof, which execution was returned unsatisfied. The judgment was subsequently assigned to the plaintiff. The defendant is now, and for upwards of seven years last past, has been a resident and citizen of the State of New York, but when he became such, or whether he was such at the date of the entry of the judgment is not stated, nor does it appear that the plaintiff is a resident of this State.

The question submitted for decision is: Does the Statute of Limitations of the State of Colorado prevent a recovery in an action on the judgment in this State?

By statutes of Colorado, enacted in the year 1891, it is provided concerning the limitation of time within which actions may be brought in the courts of that State as follows: "Section 2900. The following actions shall be commenced within six years next after the cause of action shall accrue and not afterwards: First. All actions of debt founded upon any contract or liability in action. Second. All actions of debt founded upon judgments rendered in any court not being a court of record. Third. All actions for arrears of rent. Fourth. All actions of assumpsit or on the case founded on any contract or liability express or implied.

Fifth. All actions for waste and trespass upon land. Sixth. All actions of replevin and all other actions for taking, detaining or injuring goods and chattels. Seventh. All actions on the case except for slanderous words and for libels." It is further provided by section 2529 of the said statutes, in substance, that all the goods, chattels and real estate of any person against whom a judgment shall be obtained in any court of record, either at law or in equity, for any debt, damage or costs, shall be liable to be sold on execution, and the judgment shall be a lien on real estate for seven years from the last day of the term of the court in which the judgment is rendered; provided, however, that execution be issued within a year after the entry of the judgment "and after the said seven years the same shall cease to be a lien on any real estate as against bona fide purchasers or subsequent incumbrances by mortgage, judgment or otherwise." There is printed in the record a provision of an act of 1883 which limits the duration of the judgment lien to six years, but that was changed to seven years by the act of 1891. It is also provided by the laws of the State of Colorado that a judgment recovered in a civil action may be revived by filing a petition in which shall be alleged the time the judgment was recovered, that it remains unsatisfied in whole or in part, and stating the amount the judgment should be revived for and verifying it as complaints in actions are verified. Upon filing such a petition an order to show cause is issued, upon the return of which the defendant may appear and answer as in an action "and the court shall try and determine any issue so formed the same as any issues made by pleadings are required to be tried and decided, and hear any evidence necessary to decide the matter." It is further provided that if the court decide to revive the judgment an order to that effect shall be made and attached to the original files in the cause, entry thereof made in the judgment docket and book, "and if the petition is filed before the liens created by the original judgment have expired and the transcript of the entry is filed, etc., all rights under such judgment shall continue, and execution may issue on such revived judgment the same as on the original judgment."

It is set forth in the agreed statement that no further or other laws of Colorado have been found bearing on the question submitted, and no judicial decisions of the tribunals of that State have been cited or referred to.

It is claimed by the defendant that, under the provisions of the laws of Colorado above re-

ferred to, "the judgment is dead, barred and not enforceable," and cannot form the basis of an action either in that jurisdiction or this. That an action, as distinguished from the proceeding for revival by *scire facias*, would not lie upon it in Colorado is plain, and results from the first clause of section 2900 above quoted. Although judgments of courts of record are not mentioned in terms, yet actions of debt are barred in six years. In these statutes the several kinds of actions coming within their operation are referred to by their common law designation, and under common law pleading debt was the appropriate form of action on a judgment, *Andrews v. Montgomery*, 19 Johns., 165, citing 1 Chitty, 94, etc., the cause of action being one arising on a record. The effect of the six years' bar is not, however, that contended for by the defendant. Although an action cannot be maintained on the judgment after six years, yet the lien by express provision continues one year longer and the judgment may be revived, not necessarily within six or seven years, but if within the longer period certain rights are preserved to the judgment creditor. It is not true, therefore, that at the end of six years the judgment is a nullity, and all rights under it terminated; but the duration of the lien is not important in this case, as the legislation extending the term from six to ten years was after the expiration of the lien of this judgment.

But it is urged by the defendant that whatever pleas would be good to an action on the judgment if brought in Colorado would be equally available to defeat an action on it brought here; but as was held in *McElmoyle v. Cohen*, 13 Peters, 312, the plea of the Statute of Limitations to an action founded upon a judgment of another State goes to the remedy only and the *lex fori* prevails, and such is the settled law of this State. In *Miller v. Benham*, 68 N. Y., 83, suit was brought on a California judgment. The five years bar of the Statute of Limitations of that State was set up as a defense. The court said: "It is well settled in this State that a plea of the Statute of Limitations of the State or country where the contract is made is no bar to a suit brought in a foreign tribunal and the *lex fori* governs all questions under that Statute. *Lincoln v. Battelle*, 6 Wend., 476; *Ruggles v. Keeler*, 3 Johns., 283; *Power v. Hathaway*, 43 Barb., 214; *Finlandson v. Lachmeyer*, 37 How., 145. As is said in *Scudder v. Union Nat. Bank*, 1 Otto, 406: "Matters respecting the remedy, such as bringing suit, admissibility of evidence, Statutes of Limita-

tion depend upon the law of the place where the suit is brought." It is true that in these New York cases the actions were brought against non-residents, and that so far as concerns that class of defendants, the rule is now changed by positive legislation. By section 390, Code Civ. Pro., it is provided that where a cause of action not involving title to or possession of realty within this State accrues against a person then not a resident, an action thereon cannot be maintained against him or his personal representatives after the expiration of the time limited by the laws of his residence, except by a resident of the State, and in a case where the cause of action originally accrued in favor of a resident, or where before the time so limited the person in whose favor the cause of action accrued was or became a resident, or assigned the cause of action to a resident who continuously thereafter owned the same.

This provision of the code does not alter the general rule. It merely relates to actions against non-residents upon claims barred by the law of the States in which they reside and has no application here. It does not appear in the agreed statement that the conditions as to residence of either of the parties or of the plaintiff's assignor are or were such as to bring the case within section 390 of the Code of Civil Procedure, and we are not at liberty to draw any inferences of fact whatever. Fearing, &c., v. Irwin, 55 N. Y., 486.

The plaintiff is entitled to judgment for \$1,761.20 and interest from December 22, 1883, and costs to be taxed.

VAN BRUNT, P. J., and O'BRIEN, J., concur.

AN officer who was going on leave left his horse and dog-cart in charge of a friend. This friend, one dark night, met a marriage procession in the street with music and fireworks. The horse took fright and the dog-cart was upset and smashed. The gentleman who met with this accident filed a suit against the bride's father and got damages for the destruction of the dog-cart. The defense took the point that he was not the owner, but the district marshal and the district judge held that his possession was sufficient to entitle him to sue. Almost precisely the same case has occurred in England, but there the horse took fright at a tram-car. *Claridge v. South Staffordshire Tramway Company* (1892), 1 Q. B., 422. The decision was the other way. It was held that the temporary possessor cannot sue unless for any loss sustained by himself. Thus in the Indian case the measure of damages ought to have been his loss of the use of the cart until the owner returned from leave.—*Indian Jurist*.

Circuit Court of Appeals, Fifth Circuit.

GRANT ET AL. v. EAST & WEST RR. CO. ET AL.

APPEALABLE DECREE—Dismissal of Auxiliary Bill—Retaining Cause for Master's Report.—An original bill was filed for the purpose of foreclosing a railroad mortgage. An auxiliary and dependent bill was then filed against complainant in the original bill, the railroad, and others, charging that certain bonds secured by mortgage were invalid, and not entitled to benefit under the mortgage. *Held*, that a decree dismissing the auxiliary bill, but retaining the cause, and referring it to a master to ascertain the priority and validity of liens on the mortgaged subject, and marshal conflicting claims to the bonds in question, was final as to the auxiliary complainants, and one from which they might appeal.

Decided May 30, 1892.

APPEAL from the Circuit Court of the United States for the Southern Division of the Northern District of Alabama.

Suit by Grant Bros. against the East & West Railroad Company of Alabama and others. From a decree for defendants, plaintiffs appeal. On motion to dismiss the appeal. *Denied*.

Mr. Justice MCCORMICK delivered the opinion of the Court:

The American Loan & Trust Company of New York, in June, 1888, filed its bill to foreclose the consolidated first mortgage of the East & West Railroad Company of Alabama for the equal benefit of the holders of the bonds secured by said mortgage. To this bill the railroad company and James W. Schley and Joel Brown were made defendants. On the 26th of July, 1888, Grant Bros. had leave to file an auxiliary and dependent bill against the complainant in the original bill and the railroad and William C. Browning, Edward F. Browning, Eugene Kelly, John Byrne, John Hull Browning, and Amos G. West. This auxiliary bill was presented in behalf of complainants therein, and all other bondholders similarly situated, and charged that complainants and others were the innocent purchasers for value before maturity, and without notice of any defect in said bonds, of a considerable number thereof, and that 966 bonds, in which the defendants named in their bill claimed some interest or ownership, were invalid and illegal, and not entitled to benefit under said first consolidated mortgage. The defendants to the auxiliary bill answered individually, and the whole suit proceeded in the usual manner, and came on to be heard on the 22d of October, 1891, "upon all of the proceedings and pleadings, including the original bill of foreclosure, and the auxiliary and dependent bill of Grant Brothers, and the inter-

vention of James W. Schley, and the several answers thereto, and upon the proofs taken in said several causes, and was argued by counsel." And on the 13th of January, 1892, the decree of the Circuit Court thereon was filed therein, which, after the usual findings, covering every material issue made by the parties, concluded in these words:

"It is now ordered, adjudged, and decreed that the auxiliary and dependent bill of James and Frederick Grant be, and the same is hereby, dismissed with costs; that the intervention of James W. Schley be, and the same is, maintained, so far as to recognize the validity of the judgment obtained by him in the Circuit Court of Cherokee County, in the State of Alabama, as a valid and binding judgment, with a lien upon the property of the said railroad company, but subject and inferior to the lien given by the first consolidated mortgage of the East & West Railroad Company of Alabama, herein declared foreclosed; and as to all other matters said claims and interventions of James W. Schley be, and the same are hereby dismissed. And it is now further ordered, adjudged, and decreed that this cause be referred to the special master *pro hac vice*, F. S. Ferguson, to ascertain and schedule the mortgaged premises now in the hands of the receiver, under the orders of this court, and to report and determine with all convenient speed the validity and the amount of the liens on the mortgaged premises, and their relative priority, but in marshalling all conflicting claims to said bonds the said special master shall proceed according to this decree and in conformity therewith. And let it likewise be referred to the said master to take an account of what is due to the complainant, or to those for whom complainant claims, for principal and interest on the said mortgage and bonds so found outstanding, and entitled to the benefits of the lien of the said mortgage, and for complainant's disbursements and allowances to counsel for the mortgage, and costs to be taxed. And said master shall, in furtherance of this end, cause advertisements to be published in two newspapers, published, one in Alabama and the other in Georgia, which he may think most fit, to the effect that such lien claimants as have hitherto failed to do so shall come in and file their interventions within thirty days thereafter, or, in default thereof, they will be excluded from the benefits of any decree in this suit, and from participation in the proceeds of any sale. And upon the coming in and confirmation of said report, let a decree *nisi* be entered that the defendant, the East & West Railroad

Company of Alabama, have thirty days thereafter in which to pay into the registry of the court, to the credit of the cause, the amount so found due for principal and interest on the said mortgage; but, in default of such defendant's paying what shall so be found to be due by the said railroad company for principal, interest, and costs by the expiration of the time aforesaid, then the said defendant the East & West Railroad Company of Alabama, and the other defendants and interveners claiming through and under said railroad company, shall from thence forth stand absolutely debarred and foreclosed from all equity or redemption of, in, and to the said mortgaged premises, and every part and parcel thereof. And upon the confirmation of the said report aforesaid, any party, intervener, or interlocutor shall have leave to apply for final decree herein, and for a sale of the mortgaged premises found to be embraced in said mortgage, in the event that the said railroad company shall continue to make default in the payment of the principal and interest, etc., found due on the mortgaged premises as aforesaid."

From this decree Grant Bros prayed an appeal to this court, which was allowed by the Circuit Court, and was perfected, and in due time the record was filed in this court. The appellees now move to dismiss this appeal, "on the ground and for the reason that the said decree is not final, and because the same is not appealable" to this court. Appellees' counsel contend that the cause cannot be divided so as to bring up successively different parts of it, (citing *The Palmyra*, 10 Wheat., 502), and that appellants will not be injured by denying them an appeal in this stage of the proceedings. The decisive nature of the order is admitted freely, as is also the right of appellants ultimately to have it reviewed here upon appeal; but counsel urge that the appeal has been prematurely taken, and that, when the master's report comes in and is finally acted upon by the court, upon appeal from that decree every matter in dispute will be open to the parties in this court, and may all be heard and decided at the same time; citing *Perkins v. Fourniquet* 6 How., 206; *Iron Co. v. Martin*, 132 U. S. 91, 10 Sup. Ct. Rep., 32. They contend that the only known qualification of this rule is that, when the decree decides the right to property in contest, and directs it to be delivered up by one party to his adversary, or directs it to be sold, or directs one party to pay a certain sum of money to his adversary, and the adversary is entitled to have such decree carried immediately

into execution, the decree must be regarded as a final one to that extent, and authorizes an appeal to this court, although so much of the bill is retained in the Circuit Court as is necessary for the purpose of adjusting by a further decree the accounts between the parties pursuant to the decree passed. In all the cases cited by counsel in support of this motion, and in all the cases cited and reviewed by Mr. Justice Blatchford in delivering the opinion of the Court in *Iron Co. v. Martin* in support of their decision in that case, the decrees, though decisive of the main issues between the parties thereto, still left for further settlement before the master other and dependent issues between the same parties. In this case before us the decree appealed from dismissed the complainants in the auxiliary bill entirely from the case, and also dismissed a number of defendants to that bill entirely from the case. The matters retained for such action of the master as would require confirmation before a decree of sale was to issue were matters between the parties to the original bill, in which the complainants had in the auxiliary bill and the defendants not parties to the original bill had no interest as parties, whatever might be their relation to the bonds and stock of the defendant railroad. In *Hill v. Railroad Co.*, 140 U. S. 52, 11 Sup. Ct. Rep., 690, complainant sought to compel a transfer to him of certain shares of the capital stock of the defendant company, and for other relief against numerous defendants, who were alleged to be interested, more or less, in the several contracts and transactions out of which the claim of the complainant arose. The cause came to decree 8th June, 1885, and relief to complainant "upon all matters and things in controversy" thereon was denied, except as to one matter, as to which it was retained against the railroad company and its directors, the only parties defendant interested in that matter. From this decree the complainant prayed an appeal, which was allowed by the Circuit Court, but was not perfected in due time, and was dismissed for failure to file transcript in the Supreme Court at the next term after the appeal was taken. As to the matter retained, the case proceeded in the Circuit Court, and came on to be further heard, and to a further decree in January, 1887, from which decree complainant prayed an appeal, which was allowed and perfected. On this appeal all the errors alleged related to the decree made in June, 1885; none were assigned as to the decree of July, 1887; and the question, therefore, was whether on this appeal any of the matters which were determined by the de-

cree of June, 1885, remained open for consideration. On this question the Supreme Court announce:

"We are of the opinion that the decree of June 8, 1885, was a final decree, within the meaning of that term in the law respecting the appellate jurisdiction of this court, as to all matters determined by it, and that they are closed against any further consideration. It disposed of every matter of contention between the parties, except as to the amount of one item, and referred the case to a master to ascertain that. * * * The fact that that it was not disposed of did not change the finality of the decree as to the defendants against whom the bill was dismissed. * * * They were no longer parties to the suit for any purpose. The appeal from the subsequent decree did not reinstate them. All the merits of the controversy pending between them and the complainant were disposed of, and could not be again reopened, except on appeal from that decree" (of June 8, 1885.)

Any further review of the authorities cited and relied on to defeat this motion to dismiss the appeal in this case is unnecessary, as we are of opinion that the case last cited settles the question here made before us, and that the motion should be denied, and it is so ordered.

PARDEE, Circuit Judge, having sat in the Circuit Court rendering the decision appealed from, took no part in the hearing or disposition of this motion.

TESTATORS not unfrequently wish their executors or legatees to do something with their property which they do not express in their will. The result is that, by means of memoranda or parol requests, they endeavor to confer equitable benefits on people, and doubts easily arise as to whether the memoranda are testamentary and consequently should be proved with the will and whether the bequests are enforceable trusts. In the goods of Lockwood, 66 L. T. Rep. N. S., 124, there was known to be some memorandum in existence, which might be testamentary, and of which the testator's solicitors had cognizance; so Mr. Justice Jeune permitted the executors to interrogate the solicitors on the subject under Section 26 of the Probate Act, 1857. If a testator wishes certain things to be done sub rosa, he should leave a letter addressed to the person to do them, not executed as a will, and not communicated to the person in his (the testator's) lifetime, and it is well to state *ex abundante cautela*, that the wish expressed is only a recommendation, and that it is not intended to create an enforceable trust.—*London Law Times*.

NOTES.

NEGLIGENCE—Blasting under Contract with the United States.—Where defendant read in evidence without objection a contract purporting to have been made by him with one of the corps of engineers of the United States army, "in behalf of the United States of America" and approved by the Chief of Engineers, U. S. A., authorizing him to do certain blasting, whereby were occasioned the injuries for which damages were sought, and refrained from offering other evidence to prove his authority from the United States, because the Court, without objection on plaintiff's part, stated that the authority was not denied, and that it could not be questioned, because the contract had been proved, plaintiff could not subsequently insist that the authority was not shown.—*Benner v. Atlantic Dredging Co.*, N. Y., 31 N. E. Rep., 328.

NEGLIGENCE—Pleading.—A complaint for personal injuries received at a railroad crossing, which shows that plaintiff was an infant driving a two-horse team, is not subject to demurrer, as showing contributory negligence, where the age of plaintiff is not given. *Louisville, E. & St. L. R. Co. v. Pritchard*, Ind., 31 N. E. Rep., 358.

THE COURTS.

IN EQUITY.—New Suits.

14164. Charles Bowen v. Dora A. Bowen. For divorce. Com. sols., Ralston & Siddons.

September 9.

14165. Elsie Maria Parker v. Samuel H. Parker. For divorce. Com. sols., French & Okie.

14166. The Am. Dolph Co. v. Arthur Simmones et al. To annul two deeds and for accounting Sub-lot 6, Square 161. Com. sol. S. T. Thomas.

September 10.

14167. Elizabeth Ready v. Daniel J. Ready et al. For partition. Com. sol., Jno. A. Clarke.

14168. John C. Heald v. T. Owenberry et al. To vest title, "Oxon Hill." Com. sol., A. S. Worthington.

14169. Catherine V. Reichley v. Frank B. Reichley. For divorce. Com. sol., James T. Hunter.

14170. C. J. Hillyer et al. v. Mary A. and Jessie A. Sunderland. For an account and sale. Com. sols., W. L. Hillyer and F. L. Siddons.

September 13.

14171. Catherine Jordan v. "Ossarius," alias "John" Jordan. For divorce. Com. sols., Nauck & Nauck.

14172. Mary C. Roche et al. v. E. M. Shea et al. For partition by sale part of lots 7, square 558; 2, square 556; 100-103 and sub-lot 26, square 515; lot 1, square 525. Com. sol., J. J. Darling-ton.

14173. Emma Earnshaw v. Wm. E. Earnshaw. For divorce. Com. sol., S. C. Mills.

14174. Paul O. Jackson v. Margaret Jackson. For divorce. Com. sol., Paul O. Jackson.

Legal Notices**Rule of Court.**

RULE 20. * * * * Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

FIRST INSERTION.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**
Holding a Special Term for Orphan's Court Business.

Sept. 16th, 1892. No. 4609. Admn. Doc. 17.

In the case of Charles C. Glover, Executor of GILLET F. WATSON, deceased, the executor aforesaid has, with the approval of the court, appointed Friday, the 21st day of October, A. D. 1892, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the executor will take the benefit of the law against them.

Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
ss Arthur T. Brice, Proctor.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphan's Court business, letters of administration c. t. a. on the personal estate of WILLIAM S. GRAHAM, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of September, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of September, 1892.
ss LOUISA GRAHAM.
Geo. F. Graham, Proctor, 1319 F St. n. w.
No. 5042. Admn. Doc. 18.

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphan's Court business, letters of administration c. t. a. on the personal estate of BASIL BEALL, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of September, 1892.
ss GEORGE JACOBS.
Gordon & Gordon, Proctors.
No. 5106. Admn. Doc. 18.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphan's Court Business.

This 16th of September, 1892.

In re estate of LINA R. BINGHAM, late of Washington, D. C. No. 5129. Admn. Doc. 18.

Application having been made for the probate of a paper-writing proponed as the last will and testament, and for letters testamentary on the estate of said Lina R. Bingham, deceased, and for a commission to take testimony of non-resident subscribing witnesses to the said will and testament by Emma M. Gillett.

Notice is hereby given to all concerned to appear in this court on Friday, Oct. 14th, 1892, at 1 o'clock p. m., to show cause, if any exist, against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter once in each of three successive weeks before said day.

ss By the Court. W. S. COX, Justice.
A true copy. Teste. L. P. WRIGHT, Reg. of Wills, D. C.

Legal Notices**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**
Holding a Special Term for Orphan's Court Business.

This 16th of September, 1892.

In re Estate of MARY COVER PERRY, late of the District of Columbia, dec'd. No. 5184. Admn. Doc. 18.

Application having been made for letters of administration on the estate of said Mary Cover Perry, deceased, by George C. Brown.

Notice is hereby given to all concerned to appear in this court on Friday, October 14th, 1892, at 12 o'clock a. m., to show cause if any exist against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter once in each of three successive weeks before said day.

By the Court. W. S. COX, Justice.
A true copy. Teste: L. P. Wright, Reg. of Wills D. C.
ss C. M. & H. S. Matthews, Proctors for applicant.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphan's Court Business.

Sept. 16th, 1892. No. 4554. Admn. Doc. 17.

In the case of Louise F. Hurley, administratrix of Caroline Knodel, deceased, the administratrix aforesaid has, with the approval of the court, appointed Friday, the 14th day of October, A. D. 1892, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the administratrix will take the benefit of the law against them.

Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
ss Edwards & Barnard, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Cora L. Harrison } In Equity. No. 14,049.

George H. Harrison. On motion of the complainant by A. B. Webb and Samuel D. Truitt, her solicitors, it is this 16th day of September, A. D. 1892, ordered that the defendant, George H. Harrison, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for an absolute divorce on the grounds of desertion and cruelty.

W. S. COX, Justice.
A true copy. Test: J. R. Young, Clerk.
ss [Filed Sept. 16th, 1892.] By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Thomas B. Jackson and others } In Equity. No. 14,073.

Henry G. Slat. The trustee, William A. Easterday, having reported the sale for six thousand (\$6,000) dollars, all cash, to Michael A. and Patrick Dugan, of the east thirty feet fronting on Bridge street of lot numbered thirty-six, in Georgetown and known as No. 3300 Bridge or M street, it is this 21st day of September, A. D. 1892, ordered that the said sale shall stand finally ratified and confirmed on Thursday, October 20, 1892, unless good cause to the contrary be shown on or before that day.

Provided, however, this order be published once a week for three successive weeks prior to that date in the Washington Law Reporter.

W. S. COX, Justice.
A true copy. Test: J. R. Young, Clerk.
ss By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Benjamin Butterworth, Admr. c. t. a. of the estate of Susan Walker, deceased, vs. E. Otis Kendall et al. No. 13,731. Equity.

The trustee in this cause having reported that he has sold the real estate described in this cause at the price of 53½ cents per square foot, it is this 19th day of Sept., 1892, ordered, that said sale be confirmed unless cause to the contrary be shown on or before the 16th day of October, 1892.

Provided, that a copy of this order be published in the Law Reporter once a week for three weeks before said day.

By the Court. W. S. COX, Justice.
A true copy. Teste: J. R. Young, Clerk.
ss By R. J. Meigs, Jr., Asst. Clerk.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,**
The 19th day of Sept., 1892.

Grace M. Parker }
 v. No. 14181. Eq. Docket 34.
 John B. Parker }

On motion of the plaintiff, by Mearns. J. P. Earnest and C. O. Tucker, her solicitors, it is ordered that the defendant, JOHN B. PARKER, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce from the bonds of matrimony, on the grounds of desertion.

By the Court. W. S. COX, Justice, &c.
 True copy. Test: J. R. Young, Clerk, &c.
 By M. A. Clancy, Asst. Clerk.

This is to Give Notice

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of SARAH ROBINSON, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 3rd day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 15th day of September, 1892.
 38 JOHN E. LITTLE,
 WM. D. HENRY.

Wm. D. Henry, Proctor.
 No. 5023. Admin. Doc. 18.

SECOND INSERTION.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of CLARA JOHNSON, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of September, 1892.
 CHARLES H. CRAGIN,
 321 1/2 St., n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Wilson E. Brown, Jr. }
 vs. Equity No. 14,123.

George W. Brown et al.)

Upon motion of the complainant, by his counsel, it is this 9th day of September, A. D. 1892, ordered that the defendant, William H. Tucker, cause his appearance to be entered herein on or before the next rule day first occurring forty days after this day, otherwise the cause will be proceeded with as in case of default.

The object of this suit is for an accounting, and for the reconveyance of certain property described in said bill.

It is further ordered that the above notice be published in the Washington Law Reporter and in the Evening Star for the period of three successive weeks before said rule day.

W. S. COX, Justice.
 37 A true copy. Test: J. R. Young, Clerk.
 [Filed September 9, 1892. J. R. Young, Clerk.
 Lipcomb & Woodard, Attorneys.]

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of GIACOMO ANECHINI, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of September, 1892.
 THE WASHINGTON LOAN AND TRUST CO.,
 37 John B. Larner Proctor. By Andrew Parker, Asst. Sec.
 No. 5166, Admin. Doc. 18.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,**
Holding a Special Term for Orphans' Court Business.

This 9th day of September, 1892.

In re estate of MAGDALENA LIPPERT, dec'd, late of Washington, D. C. No. 5156. Admin. Doc. 18.

Application having been made for the probate of a paper-writing propounded as the last will and testament and for letters testamentary on the estate of said Magdalena Lippert, deceased, by Frances Miller, of Washington, D. C. Notice is hereby given to all concerned to appear in this court on Friday September 30th, 1892, at eleven o'clock a. m., to show cause, if any exist, against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter once a week in each of three successive weeks before said day.

By the Court. W. S. COX, Justice.
 A true copy. Test: L. P. WRIGHT, Reg. of Wills, D. C.
 38 M. A. Meas, Proctor for applicant.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Joseph W. Kain }
 vs. Equity No. 14,066.
 Ole Kain.

September 15, 1892.

Upon motion of complainant, by his counsel, S. A. Cox, it is this day ordered, that the defendant enter her appearance herein on or before the next rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce a vinculo matrimonii for adultery.

It is further ordered that the above notice be published in the Washington Law Reporter and the Washington Post for the period of three successive weeks before said rule day.

38 W. S. COX, Justice.
 A true copy. Test: J. R. Young, Clerk,
 By M. A. Clancy, Asst. Clerk.

[Filed September 15, 1892. J. R. Young, Clerk.]

THIRD INSERTION.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,**
The 7th day of September, 1892.

William E. Jones, Plaintiff, }
 v. No. 14132. Eq. Doc. 34.
 Daniel W. Taulmann et al., Defendants.)

On motion of the plaintiff, by Mr. E. H. Thomas, his solicitor, it is ordered that the defendants, DANIEL W. TAULMANN and CECELIA TAULMANN, his wife; GEORGE R. L. TAULMANN and GRACIE M. MAHON, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain partition by way of sale of Taulman Tract of three acres of land known as part of Youngborough in the District of Columbia, and to confirm deeds of defendants George R. L. Taulman and Gracie M. Mahon to plaintiff.

By the Court. W. S. COX, Justice, &c.
 True copy. Test: J. R. Young, Clerk, &c.
 38 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
James A. O'Donovan et al.)
 v. In Equity. No. 12,820.

Mary E. O'Donovan.

Hugh T. Taggart, the trustee heretofore appointed by the decree passed in this cause to make sale of the real estate in the bill of complaint described, having reported to the court that he had made sale of said real estate, viz: part of lot 207 in Beatty and Hawkins' addition to Georgetown, having a front of 34 feet 4 inches on High street and extending back in parallel lines to Market street, on which last mentioned street it has a front of 32 feet, to Mary Harrington, at the rate of \$1.05 per square foot, amounting to \$4,040.90, less the sum of \$30.00 allowance for deficiency in the ground, making the net purchase money \$3,980.92.

It is, this 7th day of September, 1892, ordered by the court that the said sale be ratified and confirmed unless cause to the contrary be shown on or before the 10th day of October, 1892.

Provided that a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to said day.

38 WALTER S. COX, Justice.
 A true copy. Test: J. R. Young, Clerk.
 By M. A. Clancy, Asst. Clerk.
 [Filed September 7, 1892. J. R. Young, Clerk.]

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration c. t. a. on the personal estate of PHINEAS J. STEER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day of August, 1892.

EDWARD STEER,
300 I street, n. w.

36 No. 5052. Ad. D. 18. Randall Hagner, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 7th day of September, 1892.

Susan M. White } v. { No. 14093. Eq. Docket 34.
Wallace C. White.)

On motion of the plaintiff, by Mr. Neill Dumont, her solicitor, it is ordered that the defendant, WALLACE C. WHITE, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is divorce of plaintiff from the bond of matrimony with the defendant.

And it is further ordered that this order be published once a week for three consecutive weeks prior to said day in the Evening Star newspaper, and in the Washington Law Reporter, both having circulation in said District of Columbia.

By the Court.

W. S. COX, Justice, &c.

True copy. Test:

J. R. Young, Clerk, &c.

By M. A. Clancy, Asst. Clerk.
36 IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 7th day of September, 1892.

James H. DeVaughn et al.

v. { No. 13802. Eq. Docket 38.

William H. DeVaughn et al.) On motion of the plaintiffs, by Mr. C. E. Nicol, their solicitor, it is ordered that the defendants, WILLIAM H. DEVAUGHN, SAMUEL P. DEVAUGHN, ELIZABETH DEVAUGHN, CATHARINE SPALDING, GEORGE SPAULDING, ELIZABETH KELLY, WILLIAM KELLY, CHARLES BEACH, CARRIE L. BEACH, FANNIE SULLIVAN, CAROLINE S. DEVAUGHN JOHN H. DEVAUGHN, ALICE E. DEVAUGHN, EDGAR N. DEVAUGHN, JANE DAVIS, ELIJAH DAVIS, ALICE CROWN and WINFIELD CROWN, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a decree declaring that certain devises in the will of Samuel DeVaughn, deceased, in remainder to Martha Ann Mitchell, deceased, lapsed and became void; also to have the real estate and premises in said devisea mentioned sold, and the proceeds distributed among the persons entitled thereto.

By the Court.

W. S. COX, Justice, &c.

True copy. Test:

J. R. Young, Clerk, &c.

[Filed September 7, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

This 6th of September, 1892.

Annie Phipps

v. { No. 14015. Eq. Docket 34.

Edwin S. Phipps.)

On motion of the plaintiff, by Mr. E. B. Hay, her solicitor, it is ordered that the defendant, EDWIN S. PHIPPS, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is divorce on account of desertion.

By the Court.

W. S. COX, Justice, &c.

True Copy. Test:

J. R. Young, Clerk, &c.

By M. A. Clancy, Asst. Clerk.
36 IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of September, 1892.

Vilet Larkin

v. { No. 13999. Eq. Docket 33.

John F. Larkin.)

On motion of the plaintiff, by Mr. E. B. Hay, her attorney, it is ordered that the defendant, JOHN F. LARKIN, cause his appearance to be entered, herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for divorce, cause, desertion.

By the Court.

W. S. COX, Justice, &c.

True Copy. Test:

J. R. Young, Clerk, &c.

By M. A. Clancy, Asst. Clerk.
36

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,**
Holding a Special Term for Orphans' Court Business.

This 2d of September, 1892.

In the matter of the estate of JOSEPH A. SMITH, late of the District of Columbia, deceased. No. 5071. Ad. D. 18. Application for the Probate of the last Will and Testament, and for letters testamentary on the estate of said deceased, has this day been made by George H. B. White, of the District of Columbia.

All persons interested are hereby notified to appear in this court on Friday, September 30th, 1892, at 11 o'clock a.m., to show cause why said will should not be proved and admitted to probate, and letters testamentary on the estate of said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star of Washington, D. C., and the New York Herald, previous to the said day.

By the Court:

A. C. BRADLEY, Justice.

36 A true copy, Teste: L. P. WRIGHT, Reg. of Wills, D. C.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of HELEN JACKSON, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 2d day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of September, 1892.

The National Safe Deposit, Savings and Trust Company
by THOMAS R. JONES,
3d Vice President.

36 No. 5143. Ad. D. 18. Jno. C. Wilson, Proctor.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, letters testamentary on the personal estate of MARY JOHNSON, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 2d day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of September, 1892.

The National Safe Deposit, Savings and Trust Company
by THOMAS R. JONES,
3d Vice President.

36 No. 5161. Ad. D. 18. Jno. C. Wilson, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

Holding a Special Term for Orphans' Court Business,

This 6th of September, 1892.

In re estate of GUISEPPE CORTI, late of the District of Columbia. No. 5163. Administration Doc. 18.

Application having been made for letters of administration on the estate of said Guiseppe Corti, deceased, by Gregoria Corti (to issue to Michael Gatti).

Notice is hereby given to all concerned to appear in this court on September 23d, 1892, at 11 o'clock a.m., to show cause if any exist against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter, once in each of three successive weeks before said day.

By the Court:

W. S. COX, Justice,
A true copy. Teste: L. P. WRIGHT, Reg. of Wills, D. C.
36 Gordon & Gordon, Proctors for applicant.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 8th day of September, 1892.

Sallie Flynn

v. { No. 13,877. Equity Docket 33.

August B. Flynn.

On motion of the plaintiffs, by A.C. Richards, her solicitor, it is ordered that the defendant, AUGUST B. FLYNN, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a decree of divorce from the bonds of matrimony with the defendant on the grounds of desertion and abandonment for the full and uninterrupted period of more than two years.

By the Court:

W. S. COX, Justice, &c.

True copy. Test:

J. R. Young, Clerk, &c.

36 By M. A. Clancy, Asst. Clerk.

[Filed September 6, 1892. J. R. Young, Clerk.]

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WASHINGTON, D. C., - - - SEPTEMBER 29, 1892

District Court, E. D. Missouri, E. D.

UNITED STATES v. FORD.

1. OLEOMARGARINE ACT—Violation.—Act Cong. Aug. 2, 1886, Sec. 6, requires all retail dealers to sell oleomargarine only from the original stamped packages, “and to pack it in suitable packages, marked and branded as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe,” and imposes a specific penalty for its violation. Held, that the required approval of the department being merely as to the kind of marks to be used, an indictment may be had for neglect to conform therewith. U. S. v. Eaton, 12 Sup. Ct. Rep., 764, distinguished.
2. SAME—Indictment.—In indictments under section 6 for neglect to properly mark the package of oleomargarine, the regulation covering marks and brands made by the Commissioner of Internal Revenue should be pleaded in substance.

At Law.

PROSECUTION of Anderson F. Ford for neglect to properly mark packages of oleomargarine. On demurrer to the indictment. *Overruled.*

Mr. Justice THAYER delivered the opinion of the Court:

In this case the indictment is under the sixth section of the Oleomargarine Act against Anderson F. Ford, a retail dealer in oleomargarine, for selling oleomargarine in packages without marking the packages with the word “Oleomargarine.” A demurrer has been filed, and the question arises whether, under the recent decision of the Supreme Court of the United States in U. S. v. Eaton, 12 Sup. Ct. Rep., 764 (No. 291, October Term, 1891), the indictment is valid or invalid. In the case of U. S. v. Eaton it appears from the decision that the defendant, who was a wholesale dealer in oleomargarine, had failed to keep a book showing the oleomargarine received by him, and from whom, and to whom the same was sold and delivered. For this he was indicted under section 18 of the Act of August 2, 1886, 24 St., 212, for neglecting, omit-

ting, and refusing to do a thing required by law to be done. The court held that the Act of August 2, 1886, did not require a wholesale dealer in oleomargarine to keep such a book as the indictment in that case described, or to keep any book in fact; that the duty of keeping the book was a duty that had been imposed solely by a regulation of the Commissioner of Internal Revenue, and that a person could not be punished criminally for failing to discharge a duty so imposed. The decision in effect holds that Congress had not declared the particular act complained of to be an offense; that it was an offense created, if at all, by a regulation of the Commissioner of Internal Revenue, and that the regulation was an exercise of legislative powers not vested in the Commissioner. In the case at bar the facts are quite different. By section 6 of the Act of August 2, 1886, Congress specifically provided that all oleomargarine should be packed by manufacturers in firkins, tubs, or other wooden packages not before used, each containing not less than 10 pounds, the same to be marked, stamped, and branded “as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe.” Retail dealers were required to sell only from the original stamped packages in quantities not exceeding 10 pounds, and to pack the same in suitable wooden or paper packages, marked and branded “as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe.” The very same section of the law imposed a specific penalty for selling oleomargarine in any other form than in wooden or paper packages as above described. This section of the law, therefore, fully and completely describes a criminal offense. It requires packages of oleomargarine to be packed in a given way, and to be branded and marked before they are sold in such manner as the Commissioner of Internal Revenue shall prescribe. It also imposes a specific penalty if they are not so marked and branded when sold. The decision in the case of U. S. v. Eaton does not go to the extent of holding that because Congress left it to the Commissioner of Internal Revenue to prescribe the kind of marks and brands to be used, which was a mere matter of detail, therefore dealers cannot be punished for selling oleomargarine without such marks and brands. The difficulty in the Eaton Case was that Congress had not created any such offense as that for which the defendant was indicted. The Commissioner had, in fact, assumed to amend the law. But in the case at bar there is no such difficulty. The offense charged in the

indictment is one fully described in the sixth section of the act. The marks and brands prescribed by the Commissioner are such as he was specially authorized to prescribe. In the case at bar, therefore, the indictment states an offense against the laws of the United States, unless the decision in U. S. v. Eaton is understood to mean that no regulation of the Commissioner of Internal Revenue can have the force and effect of law. My opinion is, in view of numerous decisions of the Supreme Court in prior cases, that that is not the meaning which the court intended to convey.

Another question arises in this case, and that is whether the regulation made by the Commissioner of Internal Revenue concerning marks and brands is pleaded. I think such regulations should be pleaded in substance in indictments, but I am of the opinion that the regulation of the Commissioner is sufficiently set out in this indictment.

The demurrer is therefore overruled.

Supreme Court of California.
DEPARTMENT TWO.

WILLIAMS ET AL., RESPONDENTS,
vs.

THE FRESNO CANAL AND IRRIGATION
COMPANY ET AL., APPELLANTS.

No. 14,855. Decided Aug. 24, 1892.

APPEAL from the Superior Court of Fresno
Co. M. K. Harris, J.

Mr. Justice MCFARLAND delivered the opinion
of the Court:

This action was brought to recover damages
for wrongfully digging, plowing and scraping
away the soil of plaintiffs' land, and for an
injunction against continuing the said alleged
trespasses. The jury returned a verdict for
plaintiffs in the sum of \$750, for which judgment
was entered. Defendant appeals from an
order denying a motion for a new trial.

1. The main point urged by appellant is that
the trial court erred in denying a motion for
a non-suit made upon the ground "that no
evidence has been adduced connecting the
Fresno Canal and Irrigation Company with the
alleged trespass set out in the complaint."

The appellant, a corporation, owned a canal
running along the northern side of respondents'
land; and for the purpose of raising and otherwise
improving the canal, the top soil of respondents'
land was plowed up to an average depth
of about one foot, and over a space about sixty
feet wide and a quarter of a mile long, and
scraped off and piled up on the bank of said

canal. The work by which this was accom-
plished was actually done by one Applegarth,
and appellant contends that it was not respon-
sible for the result of such work. But it suffi-
ciently appears from the evidence that one
Manuel was the surveyor of the appellant, reg-
ularly employed at a monthly salary, and that
it was his business to have the said work done
on the canal; and that he made some kind of
contract (the particulars of which do not appear)
with said Applegarth to do said work; and that
by said contract said Applegarth was to take
the soil from respondents' land. When A
makes an independent contract with B, by
which the latter is to do for the former a piece
of work in itself harmless, and B does the work
so carelessly or unskillfully as to injure a third
party, A, as a general rule, is not liable. But
when the contract is in its very nature and
necessarily injurious to a third party, then the
doctrine of *respondeat superior* applies. In
such a case the injury does not result from the
manner in which the work is done, but from
the fact that it is done at all. In *Boswell vs. Laird*, 8 Cal., 469, frequently cited as a strong
case against the liability of principals, the
Court, by Judge Field, says: "If the mode
and manner which constituted the defect by
which the injuries complained of were occa-
sioned had been *inherent in the plan*, and this
plan had been devised by Laird and Chambers,
which the contractors were engaged to carry
out, then liability would attach to Laird and
Chambers." In the case at bar the carrying
away of respondents' soil was the very thing
contracted for; and it inherently and neces-
sarily caused the injury complained of.

Without reviewing the evidence here at
length, it is sufficient to say that, in our opinion,
the agency of Manuel to act for the appellant
in the matter of repairing and enlarging the
canal clearly appears. It was not necessary
that his employment for that purpose should
have been in writing.

2. The second point made by appellant is that
the verdict is not sustained by the evidence.
This, however, is substantially the same as the
one made about the non-suit, and is not tenable.

3. The third and last point made by appellant
is that the Court erred in allowing respondent
to ask the witness Shipp the following question:
"Would you give as much for that eighty acres
of land since the digging and scraping as you
would have given for that eighty acres of land
before?" Assuming that this question was not
in proper form, still it is impossible to see how

it could have prejudiced appellant. Before the question was asked the witness had testified at considerable length to the effect that he was a land owner, and well acquainted with the nature of the soil and the value of land where the premises described in the complaint were situated; and that the digging and scraping had taken away from the value of the land. He was afterwards examined minutely, and testified that the land was worth \$250 per acre before the scraping; and he said, "I think this digging and scraping has damaged that part dug and scraped to the extent of its whole value," and that the acres thus injured "would not be worth anything now." In the face of this testimony it was of no importance whether or not he said he would not give as much for the land after the scraping as before; of course he would not.

The order appealed from is affirmed.

Justices DEHAVEN, and SHARPSTEIN concur.

Supreme Court of Appeals of Virginia.

COLLUP v. SMITH ET UX.

Revocation of Wills—Subsequent Deed—Registry.—A father executed a will in 1872, devising one-third of his real estate to his widow absolutely, and the residue to his children in equal portions. Having been harrassed by law suits brought against him by a son-in-law, he executed a deed in 1887, conveying his lands to a trustee in fee for the benefit of his wife. *Held:* That the deed was a revocation of the will and that, having been delivered in the grantor's lifetime, it was valid and binding, though not recorded until after the death of the grantor.

Decided July 6, 1892.

APPEAL from Circuit Court of Smyth County. Opinion states the case.

Mr. Justice LACY delivered the opinion of the Court:

This is an appeal from a decree of the Circuit Court of Smyth County, rendered on the 27th day of August, 1890. The bill was filed by the appellees to annul a deed executed by one Adam Collup to George W. Allison, trustee for Sarah Ann Collup, in words and figures following, to wit:

"This deed, made this, the 8th day of July, 1887, between Adam Collup of the first part, and Sarah Collup of the second part, and George W. Allison, trustee, of the third part, all of Smyth County, Virginia—witnesseth: That the said Adam Collup, party of the first part, has this day, for and in consideration of the sum of twenty-five hundred dollars, in hand paid by the said Sarah Collup, the receipt whereof is hereby acknowledged, bargained, sold, and conveyed and transferred to George W. Allison,

trustee, for the sole use and benefit of the said Sarah Collup, all that tract of land situate in Smyth County, Virginia, on the waters of Holston River, being the tract of land upon which the said Adam Collup now resides, containing about one hundred and sixty-four acres, more or less, adjoining the lands of W. M. Copenhaver, John Fox, Henry Copenhaver, and the lands formerly owned by Jas. W. Sheffey, being a part of the tract of land willed to the said Adam Collup, by his father, Adam Collup, the boundary of said land being specifically set out in said will; and it is agreed and covenanted between the said Adam Collup and Sarah Collup and George W. Allison, trustee, as aforesaid, that the said Sarah Collup is to have, enjoy, and receive and control the whole plantation as she may desire, with the aid and assistance of said George W. Allison, trustee, and, should the said Sarah Collup desire to make any conveyance of said land, then the said trustee shall join with her in said conveyance, and the said Sarah Collup is to have and hold said tract or parcel of land free from the claims of all persons whomsoever, and the said Adam Collup warrants generally the lands hereby conveyed.

"Witness the following signatures and seals the date above written. ADAM COLLUP."

"Virginia, Smyth County—to-wit: I, A. M. Dickinson, a commissioner in chancery for the County Court of Smyth County, Virginia, do certify that Adam Collup, whose name is signed to the foregoing deed of conveyance to George W. Allison, trustee, for the sole use and benefit of Sarah Collup, this day personally appeared before me in my county, and acknowledged the same. Given under my hand this, the 8th day of July, 1887. A. M. DICKINSON, Com'r in Chancery for the County Court of Smyth County."

"Virginia: In the clerk's office of Smyth County Court, 5th of September, 1889. The foregoing deed of Adam Collup to George W. Allison, trustee, was presented in the office aforesaid, the above date, and, with the certificate of acknowledgment annexed, admitted to record. Teste: J. H. GOLLEHON, D. C."

—upon the ground that the said deed was never fully executed by delivery to the grantee; and upon the further ground that the trustee and the beneficiary therein had never formally accepted the deed, and never actually recorded it until after the death of the grantor; and that it was without a valuable consideration, unless the consideration named in the deed was now paid to the administrator. Also upon the ground of undue influence exercised upon the grantor,

and because the deed was not a fair provision for the children of the grantor. And, moreover, that the grantor in the deed aforesaid had made a will in 1872, which he never had recorded, which will was as follows:

"I, Adam Collup, of Smyth County, Virginia, being of sound mind and disposing memory, mindful of the uncertainty of life and the certainty of death, do make this my last will and testament. Clause 2d. It is my will that my beloved wife, Sarah, shall have absolutely one-third of all the estate, (remaining after making proper allowance for the execution of clause first) both real and personal, of which I may die seized—that is to say, one-third in value of my personal property and one-third in value of my real estate, including and adjoining the mansion-house. Clause 3d. I devise, will, and bequeath to Thomas J. Smith and his wife, my beloved daughter, Minerva Jane, and heirs, forever, one-third of the remaining portion of the land and one-third of the remaining portion of my personal property, after executing the foregoing provisions made in clauses first and second. Clause 4th. It is my will that my beloved daughter, Frances Collup, shall be made equal in real estate and personal property to Thomas J. Smith and wife. Clause 5th. It is my will that my beloved son, Ezra Sheffey Collup, shall be made equal in real and personal property with my daughter, Frances Collup, it being my intention to divide equally between my three children the two-thirds of my estate remaining after the allotment herein before made to my wife. Clause 6. To forever put to rest any question that may arise as to the legitimacy of my said children, I hereby acknowledge and declare that my said daughters, Minerva Jane Smith and Frances Collup, and my son, Ezra Sheffey Collup, though born before my marriage to their mother, who is now my lawful wife, are truly my children, and I hereby provide, out of abundant caution, that any property of mine remaining at my death, and not hereby otherwise disposed of by me, shall be equally divided between them. Clause 7th. It is my will that my personal property be appraised by three competent appraisers, to be appointed by Smyth County Court or Circuit Court, and if my wife or either of my children, including my son-in-law, the said Thomas J. Smith, should desire to have any of the personal property in kind, that the one so desiring may be permitted to take it at its appraised value as so much upon his or her share. Clause 8th. It is my will that the residue of my personal property be sold, and the debts due me,

if any, collected, and the proceeds divided according to the provisions of this will, and that the division of the lands directed, be made by the appraisers, one of whom should be a good surveyor, by metes and bounds, having in view quantity, quality, and value, and be recorded in the clerk's office of Smyth County Court. Clause 9th. The children, or legal representative of such of the persons named in the will as may not survive me, are to succeed to their rights under this will."

The defendants demurred to the bill, and answered the same, and set forth that Adam Collup departed this life on the 5th day of August, 1889. That in 1872—seventeen years before his death—he did prepare his will, and that he did afterwards, and before his death, and, therefore, before his will became effectual, make the deed in question, signed, sealed, and delivered to the clerk for recordation, but denying any undue influence in its procurement, and denying that grantees therein had never accepted it. That it was duly and completely delivered to the grantees, and by them accepted as an absolute conveyance. The beneficiary under the deed is the wife of the grantor, and when the deed was executed the grantor was in as good condition as he ever was. That the object of the deed was to put the wife in control of the property to protect her against a son-in-law, the plaintiff, Smith, who had told his father-in-law that, in case of his death, he would give the widow no rest, as he had given the father-in-law no rest during his life. That this plaintiff, Smith, had harassed his father-in-law, the said grantor, with vexatious lawsuits and security debts. That shortly before the grantor's death the said Smith had asserted claim to and sued the father-in-law for a large part of his land, and the father-in-law had been compelled to pay off debts and costs which he had incurred. In short, that said Smith had been a recreant and worthless son-in-law, and had lived and had been a pensioner on his father-in-law, and was now living, as he had long been doing, on his land, and had refused to pay any rent for the same, and had brought a suit against his father-in-law in his lifetime, seeking to set aside this very deed, and seeking to compel the father-in-law to make a deed to the said Smith to a part of his land, upon the ground of an alleged parol gift; which suit the father-in-law had successfully resisted, replying that there had been no gift, and no claim until then of a gift, but that the plaintiffs had occupied the land as rentees, and had been made to pay rent for the same; and that the said plaintiffs

had been shiftless and peevish and disagreeable, and had abandoned the premises and moved to another county, setting forth that the conveyance had been a voluntary conveyance of his own property, in accordance with his own rights, and in fraud of nobody else's rights, and that he had made the deed in question to provide for his wife in her old age, and to protect her against this very son-in-law, and denying that the plaintiffs had made any improvements on the said land; and alleging, further, that the said Adam Collup had sold other land during his lifetime.

Depositions were taken on both sides, the plaintiff seeking to show undue influence brought to bear on Adam Collup to induce the execution of the deed, and by the defendants establishing his competency. The Circuit Court set aside the deed as incompetent in the lifetime of the grantor, and annulled the same, and enforced the will of Adam Collup, and made distribution of the real estate under the same; whereupon the case is here upon appeal.

We are of opinion that the Circuit Court erred in setting aside the deed at the suit of the plaintiffs. The deed was duly executed and acknowledged and delivered by the grantor to the grantees, during his life, as a valid and binding deed, and is effectually completed as such. It was not actually recorded until after the death of the grantor, but there are no creditors or lienors whose rights have intervened, or which are now asserted; and, as between the beneficiaries under the will, the will was inoperative as to such property as was parted with during the life of the testator. It was competent for the testator during his life to revoke any part of his will; but the deed was a valid deed, not revocable by the grantees, by this will nor other will. As a valid gift by deed it was irrevocable, and was not affected by the will.

The decree complained of must, therefore, be reversed and annulled, and this court, proceeding to render such decree as the Circuit Court ought to have rendered, will dismiss the bill of the plaintiffs, with costs, without prejudice to any suit which may be necessary to duly administer such estate of the said Adam Collup as may not be affected by said deed.

Decree reversed.

THE DECAY OF LEGAL MAXIMS.—In early days when decisions were few and society comparatively simple in its elements, the condensation of principles into maxims was found convenient. But at present the search is more after single instances. Hence the decay of maxims.

New York Court of Appeals.

FRANCES E. WILLIAMS, Respondent,

v.

UNITED STATES MUTUAL ACCIDENT ASSOCIATION, of the City of New York, Appellant.

Where the only evidence was that one who had already crossed a railroad track a hundred feet away after meeting two parties going in the opposite direction, retraced his steps, and deliberately knelt in front of an approaching train, there is no question for submission to the jury as to an accident or suicide. As a matter of law it was a case of death from voluntary exposure to unnecessary danger.

Decided May 24, 1892.

Mr. Justice GRAY delivered the opinion of the Court:

The present action was brought to recover the amount of insurance in a policy issued by the defendant, wherein it was agreed that the sum of \$5,000 should be paid to the plaintiff, the wife of an insured member, if death should result to him from bodily injuries effected through external, violent, and accidental means. The policy provided, however, that its issuance and acceptance were subject to certain conditions; among which were the following, namely: that the insurance should not "extend to or cover * * * suicide, felonious or otherwise, sane or insane; * * * voluntary exposure to unnecessary danger," etc. The insured was struck by an engine and died shortly afterwards from the effect of his injuries. The circumstances of the occurrence are undisputed. The deceased was by occupation a book peddler and lived at Saratoga Springs. Upon an evening in the latter part of November, 1890, he was walking and crossed from the west side of the railroad, at Church street, where the line of the road runs northerly and southerly, and continued, from the track, eastwardly along Church street. When about 100 feet from the track he met with two Germans; one of whom testified that they were addressed with the remark, "Boys, look out for the engine, maybe he will catch you." One of the men replied, "I'm not afraid; my life is insured." A train was at the time approaching in the distance. The Germans continued on their way westwardly and over the track. From what was further testified concerning the movements of the deceased, it appears that he must have turned and retraced his steps; for the engineer of the approaching locomotive saw him coming west towards the track, and when within a few feet of the crossing standing still. The train was moving only at about

the rate of 4 miles an hour. The whistle was being blown and the bell rung; but, when within about 25 feet of the crossing, the engineer saw the man start and go upon the track. He says that if the man had kept on walking he could, in all probability, have gone across; but when upon the track he "squatted down," as in the position of kneeling.

The engineer, when he saw this, at once reversed his engine, and after it had stopped, got down, went to the man and found him lying against the pilot of the engine. Others came up, brought to the spot by the cry which the deceased uttered when struck; but the only evidence of what occurred, immediately before and at the time he was struck, was furnished by the engineer. The locality was lighted up by an electric light, and the crossing does not appear to have been out of order. The deceased only had an umbrella in one hand and his canvassing book in the other.

Upon these facts the plaintiff, respondent here, insisted and insists that it was for the jury to pronounce whether the acts of the deceased were with suicidal intent, or whether he was not at the time excusably engaged in an endeavor to follow the Germans, and to save them from possible injury by the approaching train. The plaintiff's counsel argues that there was room for an inference that these Germans were inebriated, and that their condition had provoked the deceased to follow and to observe them, with the intention to interfere in their behalf if threatened with danger. But the difficulty is that there was no evidence of inebriation in the Germans, and nothing more than their testimony that at the close of their day's work they had taken one or more drinks. They had gotten beyond the track, and there was nothing calling upon the deceased to incur jeopardy in their behalf. The theory rests upon the merest speculation, and is without support in a single fact in evidence. The defendant could not be charged with any obligation under its contract, unless there were facts disclosed by the evidence which would permit an inference by the jury that such an accident had occurred as would bring the case within an admitted liability of the insurer. The respondent argues that because the evidence relating to the condition in life of the assured, to his character, his temperament, and his mental soundness, was such as to negative the idea of the existence of a motive to destroy his life, and a theory was furnished to account sufficiently for the exposure of his life to the imminent danger, the case was not one where the court should either presume a suicidal intent

or impute negligence in the preservation of human life; and it was the province of the jury to draw the proper inferences and to decide the question of liability upon all the circumstances.

The argument would be unanswerable in a case where the facts were disputed, and any at all existed from which an inference was possible that there was a reasonable or excusable cause for the occurrence. In the present case there is no dispute as to how the accident occurred; nor as to the conduct of the deceased which permitted it. There is not a fact in evidence which explains the possibility of such an occurrence other than through the voluntary action of the individual, unless, upon the solitary fact that the two Germans whom he met with had taken one or more drinks, and were in the habit of occasionally drinking, the mind might be permitted to erect the fabric of a case of a more or less helpless state of inebriation upon this occasion; the perception of such a state by the deceased; an anxiety and an endeavor to avert a peril to them, and his own loss of life in consequence. That would be going too far. Mental speculation and guess work cannot be permitted to supply the facts as the basis for a liability in such a case. As the case appears from the record before us, there was no evidence that the death of the assured was the result of an accident in the proper and usual acceptation of that term. When seen, just before the train struck him, he was at first standing away from the track crossing, with the train about twenty-five feet off, and then deliberately going upon the track, stopping and lowering his body in front of the engine. The men whom he had met and addressed had crossed and were away from the track. There was no evidence of their crossing back upon it; nor of any circumstance requiring the assured to change the position of safety in which he was as the train was approaching the crossing. Can it be said with any semblance of reason, upon these undisputed facts, that injury or death was not voluntarily and unnecessarily incurred, if not deliberately invited, by the assured? I do not think so. We may not be furnished with a motive; but that is not necessary. The evidence reveals an occurrence which to all appearance was deliberately contributed to, if not permitted, and therefore, the theory of an accident is excluded. The proof would not be consistent with any such theory. It was certainly a case of voluntary exposure to unnecessary danger, without a relevant fact to change that aspect of it, and it is of no materiality

whether the act is known to have been one of suicide or not.

The case should not have been submitted to the jury. The defendant was not entitled to a dismissal of the complaint at the conclusion of the case, and the denial of its motion was error.

The judgment appealed from should be reversed, and a new trial granted, with costs to abide the event.

All concur, except Finch and Maynard, JJ., dissenting.

HERE is a copy of a unique will filed in a Pennsylvania court. The testator made his mark, and the will was evidently written by some one of his better educated neighbors.

Ocktober de 4 1867

In de Nam of God, amen. I am ——
an maeke this mey last will and testament as follows, that is to say, mey deseire is to be buried with as little expense as decensy will permit, and dat all mey debts and funeral expenses be paid as soon after my decease as conveniently may be I give and bequeath all mey massuags lands tenements and hereditaments wathsoever setuated, lay, lying and being in the Conty of —, Compeland township, which I purchased of Phelip Schneider, to mey Deer welf so lang as shee berrs mey Nam. first to my wife her drey hundred Dollers, secount acordin to law de eintraest of one thard of my astadt so lang as she be mey weddowe. I bequeat to my sohn John —— twenty fift Dollers, de'rest of my chillern schell be exectly ekell sheer and scherr a lieck. Schell I deye or deceesse den my holl estadt shall be sold so soon as convennet. I nam Samuell —— my Ex-seketer.

Wetnes mey hand an sell.—Chicago Legal News.

QUIETING TITLE—Burnt Records Act.—It is not necessary to the introduction in evidence of extracts or minutes from destroyed records, under Rev. St. 1891, ch. 118, § 29, which makes such minutes admissible in evidence where the original instruments and the record have been destroyed, that proof should be made of the loss of the antefire abstract of title, since that would be to require secondary evidence of secondary evidence. Converse v. Wead, Ill., 31 N. E. Rep., 314.

IMPLIED GRANT OF EASEMENT.—It is said that the doctrine of implied grant is as applicable to a devise as to a grant. Some remarks are made as to the kinds of easements affected.

Circuit Court of Appeals, Fifth Circuit.

DUDLEY E. JONES CO. ET AL.

v.

MUNGER IMPROVED COTTON MACH.
MANUFACTURING CO. (No. 6.)

APPEALABLE ORDERS—Interlocutory Decree—Injunction in Patent Cases.—A decree sustaining the validity of a patent, directing a perpetual injunction against its infringement, and referring the cause to a master to take an account, is an appealable interlocutory decree, within section 7 of the Act of March 3, 1891; and where, on appeal therefrom, the cause is submitted on the merits without objection, and a decree is rendered, it is too late for the appellee to question the court's jurisdiction by a motion for a rehearing.

Decided May 30, 1892.

Mr. Justice PARDEE, Circuit Judge, and Justices LOCKE and BRUCA, District Judges, sitting.

ON rehearing. For former report, see 49 Fed. Rep., 61.

Mr. Justice PARDEE, Circuit Judge, delivered the opinion of the Court:

This cause is again brought before the court on an application for a rehearing and upon a motion to vacate all proceedings had in this cause in this court, and dismiss the appeal herein for want of jurisdiction, on the ground that the decree of the court below sought to be reviewed in this case was neither a final decree, from which an appeal would lie to this court under the sixth section of the Judiciary Act of 1891, nor yet such an interlocutory order or decree that an appeal would lie under the seventh section of the said act. The case was heard in this court upon the merits without objection on the part of the appellee, and without a critical examination on the part of the court as to the character of the decree appealed from. In fact, appellee in his brief expressly states:

"It is the desire of the appellee that this cause be heard upon its merits, and we do not, therefore, wish to take advantage of any irregularities which may have occurred in bringing the case up, or of any omission to assign errors."

* * * As the case stands, it must be substantially treated as a rehearing at the circuit, and for this reason the argument is more difusive than it otherwise would be, as it involves a re-presentation of the entire case, without any direction as to special points or findings by the court below."

An examination of the decree rendered by the court below shows that, while it adjudges the validity of the patent sued on and directs an injunction termed "perpetual" against the defendants as infringers, it refers the matter to a master for taking an account. It is well

settled that such a decree is not a final decree from which an appeal could be taken, or of which this court would have jurisdiction, under the sixth section of the Judiciary Act of 1891. *Iron Co. v. Martin*, 132 U. S. 91, 10 Sup. Ct. Rep., 32, and cases there cited. We are, however, of the opinion that it is an interlocutory decree granting an injunction, from which an appeal would lie under the seventh section of the said Judiciary Act.

An interlocutory decree is:

"When the consideration of the particular question to be determined, or the further consideration of the cause generally, is reserved till a future hearing." Daniel Ch. Pr., (5th Ed.) 986.

Again:

"In fact, till a decree has been enrolled, and thereby become a record, it is liable to be altered by the court itself, upon a rehearing, while a decree which has been enrolled is not susceptible to alteration, except by the house of lords or by bill of review. For this reason it is that a decree which has not been enrolled, although it is, in its nature, a final decree, is considered merely as interlocutory, and cannot be pleaded in bar to another suit for the same matter." *Id.*, 1019.

In the note to page 986, *supra*, the subject is considered at some length, to the effect that the courts have not laid down any satisfactory definition of what is an "interlocutory decree." It is said that the difficulty is in the subject itself, for, by various gradations, the interlocutory decree may be made to approach the final decree until the line of discrimination becomes too fine to be readily perceived. It is further said that the difficulty has been increased by the fact that the definition of a final decree has often been made to turn, not upon the nature of the determination, but upon the construction of the statutes regulating appeals. An allowance of an appeal from an interlocutory order or decree, granting or continuing an injunction in an equity cause, under the seventh section of the Judiciary Act of 1891, is a new feature of the practice in the United States courts. Being of a highly remedial nature, it ought to be construed so as to give full force to the intention of the lawmaker. The mischief to be remedied by the act was that injunctions which deprived parties of the possession and control of property, or compelled enforced action in the use of property, were, under the practice of the courts, frequently rendered long before the final hearing in the case, and operated, to a great extent, in the nature of

execution before judgment. This mischief was as great in patent cases, where parties on hearings preliminary to the final decree were enjoined pending long and tedious examinations in the matter solely of accounting, as in any other cases of preliminary injunction. The case of *Richmond v. Atwood*, decided in the first circuit, and reported in 48 Fed. Rep., 910, was a case on all fours with the present one, and therein the court took and exercised jurisdiction, apparently without question. The suit was one for an infringement of letters patent wherein an appeal was taken from a decree sustaining the patent, holding the defendant to be an infringer, awarding an injunction, and ordering an account. This court having jurisdiction of the appeal under the seventh section, and having jurisdiction under the sixth section, if a final decree had been rendered in the Circuit Court, it would seem to have been competent for the appellee to waive a formal final decree, and submit the cause to this court on the merits. Our conclusion in the matter is that in this case the Circuit Court of Appeals was seized of jurisdiction under section 7 of the Act of 1891, and that as the appellee submitted the case without objection, it is now too late to question the jurisdiction of the court, even if doubtful. After a re-examination of the case, and a consideration of the briefs lately filed, we find no reason to disturb our former conclusions as to novelty of appellee's patent, or on the question of appellant's infringement. Our decree, however, was perhaps too broad, and should be modified.

The order of the court is that the motion to vacate the proceedings in this cause, and to dismiss the appeal for want of jurisdiction, be denied; that our former decree, remanding the cause, with directions to dismiss the bill, with costs, be, and the same is, modified so as to direct the cause to be remanded to the Circuit Court, with instructions to dissolve and dismiss the injunction granted in said court; and that appellee pay the costs, and that the rehearing applied for be denied.

AN attorney agreed with his client to conduct certain litigation, and the client agreed that the attorney should receive as his compensation a specified percentage of the amount recovered, reserving the right within sixty days to substitute a cash fee in place of such percentage. Held, that the agreement constituted an equitable, conditional assignment to the attorney of an interest in the subject of litigation. *Holmes v. Evans*, N. Y., 29 N. E. Rep., 233.

Injuries to Children Trespassing on Railroad Track.

The recent case of *Lake Shore & M. S. Rwy. Co. v. Bodemer*, (29 N. E. Rep., 692) suggests a brief *resume* of the decisions upon this subject. In the case cited the engineer, while running his train through a crowded portion of a large city, at a speed greatly in excess of that allowed by the city ordinance, at a place where there was a roadway on each side of the track (which was not fenced in,) ran over and killed a boy trespassing on the track. The engineer could have seen the boy 125 feet away, but did not ring the bell or blow the whistle until within a few feet of him. The court left it to the jury to say whether, under the circumstances, the engineer was guilty of such wanton and wilful negligence as would allow the administrator of the boy to recover damages in spite of the contributory negligence of the boy.

Mr. Cooley says: "Where the conduct of the defendant is wanton or wilful, or where it indicates that degree of indifference to the rights of others which may justly be characterized as recklessness, the doctrine of contributory negligence has no place whatever, and the defendant is responsible for the injury he inflicts, irrespective of the fault which placed the plaintiff in the way of injury." *Cooley on Torts*, 674. This doctrine applies to adults as well as children—as to the latter the law is still more tender. Thus a leading case holds that a railroad company is bound to exercise a high degree of caution at places and under circumstances where persons may be upon its tracks; and if, by its failure to do so, a child of tender years is injured, the company is liable in an action by the child, although the parent or custodian of the child is negligent in permitting it to be upon the track, or in not keeping a proper lookout for the cars. *Bellefontaine & I. R.R. Co. v. Snyder*, 18 Ohio St., 399; 98 Am. Dec., 175.

In other cases it is held that if an infant of tender years gets upon a railroad track in consequence of the failure of the railroad company to erect a fence as required by law, and is run over and injured by a train on the track, the company is liable to it for the injury, if the parents exercised ordinary care in guarding the child. *Schmidt v. Milwaukee, etc., Rwy. Co.*, 23 Wis., 186; 99 Am. Dec., 158; *Fitzgerald v. St. Paul, etc., Rwy. Co.*, 29 Minn., 836; 43 Am. Rep., 212.

A case more analogous to the Bodemer case, is that of *Meeks v. Southern Pac. RR. Co.*, 56

Cal., 513; 38 Am. Rep., 67, where a boy of seven lying insensible or asleep on a railway track near a highway crossing, was injured by a train. He was perceived by the fireman and engineer in time to stop, but they supposed him a bunch of leaves or weeds, until too late. No warning signal was given. His parents had forbidden him to go on the track; and the court held that a recovery was warranted. In *Hyde v. Union Pac. Rwy. Co.*, 26 Pac. Rep., 979, a child who was a trespasser, fell asleep on defendant's track. The engineer saw the child when he was between two and three hundred yards away, but could not make out what it was till within 30 feet, when he endeavored to stop the train. Here it was held that the child's father could recover. See also, *Keyser v. Railway Co.*, 56 Mich., 559; *Gunn v. Ohio River R. R. Co.*, 14 S. E. Rep., 465. A higher degree of care is demanded of the railroad company when the trespasser is a child than when he is a grown person. *Kansas Pacific Rwy. Co. v. Whipple*, 39 Kan., 431. See also, *Indianapolis, etc., Rwy. Co. v. Pitzer*, 109 Ind., 179; 58 Am. Rep., 387, which was a similar case. For cases where the company was exonerated from liability, see *Cauley v. Pittsburgh, etc., R. Co.*, 95 Pa. St., 398; 40 Am. Rep., 684; *Baltimore, etc., R. Co. v. Schwindling*, 107 Pa. St., 258; 47 Am. Rep., 706; *Philadelphia, etc., R. Co. v. Spearen*, 47 Pa. St., 300; 86 Am. Dec., 544; *Morrisey v. Eastern R. Co.*, 126 Mass., 377; 30 Am. Rep., 686.

So also in the "turntable cases" the railroads have been held liable, where turntables were left so that children could turn them, for injuries received in so doing, notwithstanding the fact that the injured ones were trespassers. *Keffe v. Milwaukee, etc. R. R. Co.*, 21 Minn., 207; 18 Am. Rep., 393; *Nagel v. Missouri Pac. R. R. Co.*, 75 Mo., 653; 42 Am. Rep., 418; *Evensich v. Gulf, etc., Rwy. Co.*, 57 Tex. 126; 44 Am. Rep. 586; Contra see *St. Louis, etc., R. Co. v. Bell*, 81 Ill., 76; 25 Am. Rep., 269. In one case found, however, the court submitted the question of contributory negligence to the jury. *Kansas Cent. Rwy. Co. v. Fitzsimmons*, 22 Kan., 636; 31 Am. Rep., 203.

The ordinary rule is that a carrier of passengers is bound to exercise only ordinary care towards trespassers and persons refusing to pay fare. *Higley v. Gilmer*, 3 Mont., 90; 35 Am. Rep., 450. And a party not sustaining the relation of passenger must, in addition to accident and his own injury, affirmatively show his own freedom from carelessness or negligence in causing or contributing to produce it. *Galena, etc. R. R. Co. v. Yarwood*, 17 Ill., 509; 65 Am.

Dec., 682. But in Hoffman v. New York Cent. etc., R. Co., 87 N. Y., 25; 41 Am. Rep., 337, a recovery was allowed where a boy eight years old jumped upon the steps of a passenger railway car and sat on the platform, to steal a ride, and the conductor or brakeman kicked him off the car while the train was moving some ten miles an hour, and he was injured. And the same result was reached in Kansas City, etc., R. Co. v. Kelly, 36 Kan., 655; 59 Am. Rep., 596.

A street railway company is bound to exercise the highest degree of diligence to discover and avoid injuring a young child on its track. Galveston City R. Co. v. Hewitt, 67 Tex., 473; 60 Am. Rep., 32. But see Hestonville Pass. Rwy. Co. v. Connell, 88 Pa. St., 520; 32 Am. Rep., 472; Philadelphia, etc., Pass. Rwy. Co. v. Henrice, 92 Pa. St., 431; 37 Am. Rep., 699; Bishop v. Union R. R. Co., 14 R. I., 314; 51 Am. Rep., 386.

In Givens v. Kentucky Central R. R. Co., 15 S. W. Rep., 1057, plaintiff's decedent, a boy nine years old, was killed in passing over defendant's railroad track at a place which was neither a public highway nor a usual crossing place, though within the limits of a village. A freight train had just passed, and the decedent, without seeing the engine and tender which immediately followed it running backward, went upon the track and was killed. The engine was not going faster than a man could walk, and the son of the engineer in charge of the engine could not see the decedent because of the tender. It was held that a binding charge in favor of the defendant was proper. See also, Tannis v. I. C. R. T. Rwy. Co., 25 Pac. Rep., 876; Spicer v. Ches. & Ohio R. R. Co., 44 W. Va., 514.

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STOCKBROKERS — Purchase of Stock. — The fact that defendants, who were stockbrokers, directed the purchase of certain stock in pursuance of a contract with their principal to carry it for him on a margin, such direction does not authorize the broker from whom the stock was purchased to make a transfer thereof to defendants on the books of the company. Glenn v. Garth, N. Y., 31 N. E. Rep., 344.

♦♦♦

Employment of Solicitors by Married Women. — Costs can be recovered either by virtue of statute or contract. Divorce proceedings afford an illustration of the former. In the case of contract the wife may have authority to pledge her husband's credit for necessary services. Where neither of these grounds exists the liability must depend upon the possession of free separate estate.

Circuit Court N. D. Illinois.

BISHOP v. AMERICAN PRESERVERS' CO. ET AL.

1. **CONTRACTS IN RESTRAINT OF TRADE—Trust Combinations.** — Act Congress July 2, 1890, (26 St. at Large, 200,) which forbids combinations in restraint of interstate commerce, and gives a right of action to any person injured by acts in violation of its provisions, does not authorize suit where the only cause of action is the bringing of two suits which have not been decided.
2. **SAME—Pleading.** — A declaration in such an action which does not aver that the goods manufactured by plaintiff, and in respect of which he claims to be injured, are a subject of interstate commerce, or that the acts complained of have anything to do with any contract in restraint of trade, or that the parties are citizens of different States, is demurrable.

Decided June 8, 1892.

At Law. On demurrer to declaration.

ACTION by Andrew D. Bishop against the American Preservers' Company, Bernard E. Ryan, and T. E. Dougherty, for injuries alleged to have been sustained in his business and property by reason of acts of the defendants in violation of the "Anti-Trust Law," (26 St. at Large, 200.) That act makes illegal all combinations "in restraint of trade or commerce among the several States," and provides that "any person who shall be injured in his business or property by any other person or corporation, by reason of anything forbidden or declared to be unlawful by this act, may sue therefor, and recover threefold damages."

Mr. Justice BLODGETT, District Judge, delivered the opinion of the Court:

This suit is now before the court on a demurrer to the declaration by the defendants, the American Preservers' Company, Bernard E. Ryan, and T. E. Dougherty.

Plaintiff charges that in 1888 he was engaged in the business of manufacturing fruit butter, jellies, preserves, etc., in the city of Chicago, and that, at the instance of others engaged in the same business, he entered into an agreement with them for the formation of a trust or combination for the purpose of advancing and maintaining the prices of such goods, and that a trust or combination called the "American Preservers' Trust" was organized for that purpose, of which plaintiff became a member, and to which he conveyed his property and plant which he had used in said business; that afterwards the managers of the organization decided to take in more manufacturers and their property, and adopt the form of organizing under a charter granted under the laws of West Virginia for the purpose of conducting the business of said trust, and that he assigned and

transferred his property used in said business to the said company, the American Preservers' Company, one of the defendants herein; that, after he had so transferred his property to the said trust and company, differences arose between himself and the managers of said trust, and the said trust known as the "American Preservers' Company" brought a suit of replevin in one of the courts of the city of Chicago, and took possession of the property and plant, books, etc., which plaintiff had used in the management of his business in connection with said trust, and that said defendant, the American Preservers' Company, has also brought suit at law in this court against plaintiff, claiming to recover the sum of \$3,000. This is the substance of the declaration.

It is sufficient for the purposes of this demurrer to say :

1. This declaration does not show that the suits complained of are yet decided. It may on trial be shown and decided that the defendant has the right to maintain both these actions against plaintiff.

2. As a rule an action at law cannot be maintained for bringing even a false and fictitious action against a person. The commencement of a suit at law is an assertion of the right in a manner provided by law, and persons so commencing suits cannot be subjected to other actions or penalties by reason of their having done so, or for asserting or prosecuting what they claim as a legal right. The remedy of the party so sued is in defending the suit, and, if he is successful in his defense, he recovers costs, and sometimes damages. Gorton v. Brown, 27 Ill. 489; Speer v. Skinner, 35 Ill. 282; Wetmore v. Mellinger, 64 Iowa, 741, 18 N. W. Rep., 870.

It is clear from the allegations in this declaration that the plaintiff has attempted to bring this suit under the provisions of the Act of Congress entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, (26 St., p. 209.) But the injuries complained of are not such as give a right of action under this statute. Although this defendant, the American Preservers' Company, may be an illegal organization, it may have a valid right in the property replevied, as against plaintiff, and the right to sue and collect the \$3,000 for which suit is brought. If, from difficulties growing out of the organization and management of the alleged trust, an altercation and quarrel had ensued between plaintiff and the other members or officers of the trust, and plaintiff had been assaulted by the persons he was so associated

with, it is very clear he would have had no right of action under this statute. Further, it is not averred in the declaration that the goods manufactured by plaintiff are a subject of interstate commerce. Neither does it appear that the suits complained of had anything to do with the alleged contract in restraint of trade. Certainly, as it seems to me, until the decision of the suits complained of, plaintiff has sustained no damage for which he cannot be adequately compensated by the costs and damages to be awarded in the determination of those cases, if it shall be held there was no right of action. Can a party to an illegal contract bring suit? Miller v. Ammon, 12 Sup. Ct. Rep., 884, (decided by the Supreme Court, May 16, 1892.) We do not deem it necessary to pass on that question at this time. The declaration is also fatally defective in not averring the citizenship of the parties to be such as gives this court jurisdiction. *The demurrer is sustained.*

Meerut.

KISHAN SAHAI v. ALADAD KHAN AND ANOTHER.

1. Civil Procedure Code, Section 13, Clause (2)—*Res judicata*—Execution of decree—Principle of *res judicata* as applied to execution proceedings.
2. Where a person on his own application was added as a party respondent to an appeal, and on the case in appeal being remanded under Section 562 of the Code of Civil Procedure for retrial on the merits practically took no steps whatever to defend the suit:—
3. Held, that he could not afterwards plead, by way of objection to execution of the decree, matters which ought to have formed part of his defense to the suit, had he chosen to defend it. Ram Kirpal v. Rup Kuari, I. L. R., 6 All., 289, referred to.

First Appeal No. 9, of 1890. Decided December 2, 1891.
Chief Justice Eder, and Justice Tyrell sitting.

THE facts of this case sufficiently appear from the judgment of the court.

This is an appeal arising out of the execution of a decree. One Aladad Khan brought his suit against Ismail Khan and others in which he claimed possession of his share of his father's estate. His suit was dismissed in the first court on the finding that he was illegitimate. It finally came in appeal before this court. Aladad Khan was the appellant, and during the pendency of the appeal in this court, Lala Kishan Sahai, who is the appellant in this execution appeal, presented a petition on 11th May, 1887, to this court alleging that he was the purchaser of the property in suit and asking to be made a respondent in the case, the case being the appeal. On the same day this court passed an order under sections 372 and

582 of the Code of Civil Procedure, adding him as a respondent in the suit. The result of the appeal here was that on the 7th April, 1888, this court allowed the appeal, holding that the plaintiff, Aladad Khan, was legitimate, and the suit was remanded under section 562 of the Code of Civil Procedure, for trial on the merits. Now, as we have said, that order of remand was made on the 7th April, 1888. Kishan Sahai was a party to that order of remand. The 29th January, 1889, was fixed in the court below, we assume for the hearing of the case, and on the 12th of that month, Kishan Sahai presented an application (Document No. 11) in which he asked for two months' time, on the ground that he had not his documentary evidence ready. On the 15th January, 1889, the Subordinate Judge passed an order allowing Kishan Sahai one month's time and fixing the hearing for the 6th March, 1889. The day before the 6th March, viz., on the 5th March, Kishan Sahai presented an application alleging that he had been induced by false representations of the plaintiff, Aladad Khan, to advance the money on the property and asking that he might be brought in as a party to the suit under section 32 of the Code of Civil Procedure and be allowed to put in a defense, and that issues might be framed and the case tried as against him. On the 6th March, 1889, the Subordinate Judge rightly held that as the High Court had made him a party to the suit, by its order to which we have referred, he must be regarded as a party until his name should be struck off, and that his position was not that of a party merely to the appeal, and refused the application. Now, Kishan Sahai, if he had chosen to do so, could long before the 5th March, 1889, have filed a written statement raising any defense which he had or thought he had. The suit as against him commenced from the time when he was made a party to it, and, for the matter of that, if he had been so disposed, he might have filed his written statement in this court even during the pendency of the appeal. Kishan Sahai does not appear to have taken any steps prior to the 5th March, 1889, to file a written statement either in this court or in the court below, and it is to be observed that, in the petition which he presented to this court upon which the order of the 11th May, 1887, was passed, he merely alleged his title as that of a purchaser holding a sale certificate. Ultimately the Subordinate Judge on the re-trial of the suit under the order of remand of this court decreed the plaintiff's claim for possession. When the plaintiff proceeded to execute that

decree Lala Kishan Sahai filed objections, seven in number, only one of which, namely, No. 6, is relied on here; indeed, there is nothing in the other objections. Now as to that, Lala Kishan Sahai should have raised as a defense the matter alleged in that paragraph 6, if it amounted to a defense at all. He should have done so either in this court when the case was here or at the latest in the court below in proper time. Under the circumstances we are of opinion that it is a case which falls within the principle of Explanation II of Section 13 of the Code of Civil Procedure. Although section 13 may not in terms apply, by reason of the matter not having been decided in another suit, still the Privy Council in an analogous case has told the courts in India that the principle of law underlying section 13 is to be applied to proceedings in the execution of decrees. The case to which we refer is *Ram Kirpal v. Rup Kuari*, I. L. R., 6 All., 269. In fact until the Subordinate Judge was on the eve of deciding the suit before him on remand Lala Kishan Sahai never suggested apparently any such defense as that shadowed forth in paragraph 6 of his objections. *We dismiss this appeal with costs.—Indian Jurist.*

STATUTE OF FRAUDS—Acceptance.—A review of the wavering decisions as to what is acceptance. Cases are cited in which there has been actual rejection of goods after inspection though held to be acceptance within the act. Reference is made to *Taylor v. Smith*, in which the statute is said to mean acceptance and not rejection.

Stockbrokers' Pledges of the People's Securities.—In continuation of a previous article the learned writer comments upon the decision that the pledge of a security by a stockbroker does not put the pledgee upon inquiry as to the ownership merely because the pledgor is a broker. The rule established is stated thus: "A person taking a negotiable instrument in good faith and for value obtains a title valid against all the world."

MUNICIPAL ORDINANCES — Enactment. — Where a city charter provides that public notice shall be given of the introduction of all ordinances for street improvements, an ordinance introduced upon a notice not indicatory of the substance of the ordinance will be set aside. *State v. Long Branch Comrs.*, N. J., 24 Atl. Rep., 368.

ONE of our exchanges puts a very pointed query, when it asks why the State should not reimburse innocent men who have been convicted of crime and suffered as a consequence of judicial error. In several European nations the system of reparation for judicial errors has been established and found to operate beneficially, and there seems to be no reason why it should not exist in the United States. It is a subject that can be discussed profitably in legal journals.—*Michigan Law Journal.*

MUNICIPAL IMPROVEMENTS—Sidewalks.—In a city of the second class, no petition is necessary to give the council thereof jurisdiction over sidewalks, for the purposes of repairing or reconstructing the same. *Wilkin v. Houston, Kan.*, 30 Pac. Rep., 23.

ARBITRATION BY AGREEMENT.—A submission to arbitration by agreement between the parties, and not by rule of court, which provides that the arbitrators shall report their award to the court “to be confirmed and made the judgment of the said court,” is valid, and gives the court jurisdiction. *McCall v. McCall, S. Car.*, 11 South. Rep., 348.

Legal Notices

Rule of Court.

RULE 20. * * * * * *Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.*

FIRST INSERTION.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, The 12th day of May, 1892.

Lizzie E. Allen, }
v. } Equity. No. 13,782. Docket 33.
Johnson Allen. }

On motion of the plaintiff, by Mr. E. B. Hay, her solicitor, it is ordered that the defendant, JOHNSON ALLEN, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is divorce because of cruel treatment of the complainant by the defendant.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
39 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, the 22d day of September, 1892.

Lizzie T. Taylor }
v. } No. 14,062. Equity Doc. 34.
William J. Taylor. }

On motion of the plaintiff, by Mr. C. Carrington, her solicitor, it is ordered that the defendant, WILLIAM J. TAYLOR, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is divorce “a vinculo matrimonii” for willful and without cause desertion and abandonment for two years.

By the Court. W. S. COX, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
By M. A. Clancy, Asst. Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, Holding a Special Term for Orphans' Court Business.

September, 29th, 1892.

In the case of John B. Hollingshead, administrator of FRANCIS I. HOLLINGSHEAD, deceased, the administrator aforesaid has, with the approval of the court, appointed Friday, the 21st day of October, A. D. 1892, at 1 o'clock p. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the said administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
39 No. 4518. Edwards & Barnard, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, The 29th day of September, 1892.

Catherine G. Lee, by William Cammack, her next friend,
vs.
Henry C. Lee.

No. 14,111. Eq. Docket 34.

On motion of the plaintiff, by Mr. Edmund Burke, her solicitor, it is ordered that the defendant, HENRY C. LEE, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce *a vinculo matrimonii* by the plaintiff from the defendant, and that the plaintiff be restored to her maiden name of Catherine G. Robey, on the ground of two years' abandonment and desertion by the defendant of the plaintiff. It is further ordered that this order shall be published in the Washington Law Reporter and in the Evening Star newspaper once a week for three successive weeks.

By the court. A. C. BRADLEY, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, Holding an Equity Court.

This 28th day of September, 1892.

Richard T. Bell }
v. } No. 12,138. Equity Docket 30.
Allen F. Bell. }

Ordered that the sale made and reported by the trustee in the above cause to George R. Williams on the 29th day of August, 1892, and assigned to Ammon Behrend, as in said report set forth, be ratified and confirmed unless cause to the contrary thereof be shown on or before the 28th day of October next.

Provided a copy of this order be inserted in the Washington Law Reporter, once in each of three successive weeks before the 28th day of October next.

A. C. BRADLEY, Justice.
True copy. Test: John R. Young, Clerk.
By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 7th day of September, 1892.

James H. DeVaughn et al. }
v. } No. 13,602. Eq. Docket 33.
William H. DeVaughn et al. }

On motion of the plaintiffs, by Mr. C. E. Nicol, their solicitor, it is ordered that the defendants, WILLIAM H. DEVAUGHN, SAMUEL P. DEVAUGHN, ELIZABETH DEVAUGHN, CATHERINE SPALDING, GEORGE SPALDING, ELIZABETH KELLY, WILLIAM KELLY, CHARLES BEACH, CARRIE L. BEACH, FANNIE SULLIVAN, CAROLINE S. DEVAUGHN, JOHN H. DEVAUGHN, ALICE E. DEVAUGHN, EDGAR N. DEVAUGHN, JANE DAVIS, ELIJAH DAVIS, ALICE CROWN and WINFIELD CROWN, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a decree declaring that certain devises in the will of Samuel DeVaughn, deceased, in remainder to Martha Ann Mitchell, deceased, lapsed and became void; also to have the real estate and premises in said devises mentioned sold, and the proceeds distributed among the persons entitled thereto.

By the Court. W. S. COX, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
39 4t By M. A. Clancy, Asst. Clerk.
[Filed September 7, 1892. J. R. Young, Clerk.]

Legal Notices.**SECOND INSERTION.****IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,**
Holding a Special Term for Orphans' Court Business,
This 23d of September, 1892.

In re estate of JOSEPHINE DIGMUELLER, dec'd., late of Washington, D. C. No. 5187. Administration Doc. 18.

Application having been made for the probate of a paper-writing propounded as the last will and testament, and for letters of administration c. t. a. on the estate of said Josephine Digmueler, deceased, by Michael A. Mess.

Notice is hereby given to all concerned to appear in this court on October 21st, 1892, at 1 o'clock p. m., to show cause if any exist against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter, once in each of three successive weeks before said day.

By the Court: W. S. COX, Justice.
A true copy. Teste: L. P. WRIGHT, Reg. of Wills, D. C.
39 M. A. Mess, Proctor for applicant.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

This 23d day of September, 1892.

In re estate of EMILY W. FARQUHAR, late of the District of Columbia. No. 4912. Administration Doc. 17.

Application having been made for the probate of a paper-writing propounded as the last will and testament and for letters of administration with will annexed on the estate of said Emily W. Farquhar, deceased, by Sophie S. Kreidler and Edward A. Kreidler.

Notice is hereby given to all concerned to appear in this Court on Friday Oct. 21, 1892, at one o'clock p. m., to show cause if any exist against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter once in each of three successive weeks before said day.

By the Court: W. S. COX, Justice.
A true copy. Teste: L. P. Wright, Reg. of Wills, D. C.
39 C. M. & H. S. Matthews, Proctors for applicant.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

Holding a Special Term for Orphans' Court Business.

This 28th of September, 1892.

In re estate of HENRY HALL, late of the District of Columbia. No. 5192. Administration, Doc. 18.

Application having been made for the probate of a paper-writing propounded as the last will and testament, and for letters testamentary on the estate of said Henry Hall, deceased, by Mrs. Sarah Hall, the widow.

Notice is hereby given to all concerned to appear in this Court on Friday October 28th, 1892, at 11 o'clock a. m., to show cause if any exist against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter and Evening Star, once in each of three successive weeks before said day.

By the Court: A. C. BRADLEY, Justice.
A true copy. Teste: L. P. Wright, Reg. of Wills, D. C.
39 Carusi & Miller, Proctors for applicant.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Mary M. King et al. vs. { In Equity. No. 13,384.

Edwin Forrest and Anson S. Taylor, trustees, having reported that on the 24th day of May, 1892, they sold to James McK. Eiker, part of lot one in square twenty-four, (24), for forty-three hundred (4300) dollars, and on the 25th day of May, A. D. 1892, to William W. Hough, part of lot one in square fifty-four, for thirty-five hundred and seventy-five (3575) dollars; and to William C. Hauptman, the north fourteen (14) feet of lot twelve (12) in square seventy-seven (77) for twenty-four hundred (2400) dollars, all of said lots being in the City of Washington, District of Columbia. It is this 26th day of September, A. D. 1892, ordered, that said sales will be finally ratified and confirmed on the 29th day of October, A. D. 1892, unless cause to the contrary be shown on or before said last mentioned day.

Provided a copy of this order be inserted in each of the three successive issues of the Washington Law Reporter published next after the date of this order.

W. S. COX, Justice.
True Copy. Teste: J. R. Young, Clerk, &c.
39 By M. A. Clancy, Asst. Clerk.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,**
John Walker and Amanda, his wife, Margaret Kent and Lewis Kent, Complainants.

vs.

Etta Walker, William Otis Walker, (infant) Richard R. Jackson, Guardian of Ida Walker, Lizzie Walker, and Reed Walker, (infants,) and said Ida, Lizzie and Reed Walker, Defendants.

Equity. No. 12,823. Doc. 30.

Application having been made by complainants in the above-entitled cause by R. B. Lewis, their solicitor for leave to file a supplemental bill, and it appearing that the defendants Etta Walker, William Otis Walker, Richard R. Jackson, guardian of Ida Walker, Lizzie Walker and Reed Walker, and the said Ida, Lizzie and Reed Walker are non-residents of the District of Columbia, it is this 24th day of September, 1892, ordered that the said defendants appear here within ten days after due publication of this order under the 20th rule of this Court and show cause if any they can, why such leave should not be granted. The object of the suit is for sale of lot 28 in square 100, and division of proceeds among those entitled.

W. S. COX, Justice.
A true copy. Test: J. R. Young, Clerk.
By M. A. Clancy, Asst. Clerk.

[Filed September 24, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Katherine Reidy, v. { In Equity. No. 13,183.

Wm. Keough et al. }

Charles A. Elliot and Edwin Forrest, trustees, heretofore appointed by the decree passed in this cause, to make sale of the real estate in the proceedings described, having reported to the court that they had made sale of said real estate, to wit; all that piece or parcel of land situated in the city of Washington, District of Columbia, and designated on the public plat or plan of said city as part of lot No. 28, in square 725, beginning for the same on the line of 2nd St. east at a point distant south from the northeast corner of said lot 18 ft. 6 inches; running thence west to the rear line of said lot 115 feet; thence south 18 feet 6 inches; thence east 115 feet; thence north with the line of 2nd St. east 18 feet 6 inches, to the place of beginning, to Henry Rabe, at and for the sum of \$2700, it is this 23d day of September 1892 by the court ordered that the said sale be finally ratified and confirmed unless cause to the contrary be shown on or before the 29th day of October, 1892.

Provided that a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to said last mentioned date.

W. S. COX, Justice.

True copy. Test: J. R. Young, Clerk.
39 By M. A. Clancy, Asst. Clerk.

[Filed September 23, 1892. J. R. Young, Clerk.]

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of TIMOTHY COSTELLO, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of September, 1892.

her
ELLEN X COSTELLO,
mark.

39 Albert Sillers, Proctor. No. 35 G St. n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration c. t. a. on the personal estate of HENRY D. BARR, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of September, 1892.

EMIL G. SCHAFER,
424 11th St. n. w.

39 John Ridout, Proctor.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of MARY A. M. DOWNMAN, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 22d day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of September, 1892.

CYNTHIA R. DOWNMAN,
Cr. Gordon & Gordon,
39 Gordon & Gordon, Atty's. at Law.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of MICHAEL RADY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 24th day of February, 1892.

BRIDGET RADY,
39 R. B. Lewis, Proctor. No. 18 Mass. Ave. n. e.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphan's Court business, letters of administration on the personal estate of SILAS C. CLARKE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of September, 1892.

FLORENCE M. CLARKE,
39 Allan C. Clarke, Proctor. 501 Stanton Place.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Hamilton Rothrock } v. { In Equity. No. 14,117.
Bessie Rothrock.

Upon motion of the complainant, by his counsel, A. A. Lipcomb, it is this 23d day of September, A. D. 1892, ordered that the defendant herein, BESSIE ROTHRICK, cause her appearance to be entered herein on or before the next rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

Provided a copy of this order be published in the Evening Star and the Washington Law Reporter, for the period of three successive weeks before said rule-day.

The object of this suit is to obtain a divorce, a *vinculo matrimonii*, from the defendant, Bessie Rothrock.

W. S. COX, Justice.

True copy. Test: J. R. Young, Clerk, &c.
By M. A. Clancy, Asst. Clerk.
[Filed September 23, 1892. J. R. Young, Clerk.]

SECOND INSERTION.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

The 19th day of Sept., 1892.

Grace M. Parker } v. { No. 14181. Eq. Docket 34.
John B. Parker.

On motion of the plaintiff, by Messrs. J. P. Earliest and C. C. Tucker, her solicitors, it is ordered that the defendant, JOHN B. PARKER, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce from the bonds of matrimony, on the grounds of desertion.

By the Court. W. S. COX, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
By M. A. Clancy, Asst. Clerk.

Legal Notices**This is to Give Notice**

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of SARAH ROBINSON, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 3rd day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 15th day of September, 1892.

JOHN E. LITTLE,
WM. D. HENRY.
Wm. D. Henry, Proctor.
No. 5023. Admn. Doc. 18. 407 R St., n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphan's Court Business.

Sept. 18th, 1892. No. 4808. Admn. Doc. 17.

In the case of Charles C. Glover, Executor of GILLET F. WATSON, deceased, the executor aforesaid has, with the approval of the court, appointed Friday, the 21st day of October, A. D. 1892, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the executor will take the benefit of the law against them.

Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
38 Arthur T. Brice, Proctor.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration c. t. a. on the personal estate of WILLIAM S. GRAHAM, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of September, 1892.

LOUISA GRAHAM.
Geo. F. Graham, Proctor, 1319 F St. n. w.
No. 5642. Admn. Doc. 18.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration c. t. a. on the personal estate of BASIL BEALL, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of September, 1892.

GEORGE JACOBS.
Gordon & Gordon, Proctors.
No. 5106. Admn. Doc. 18.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

This 16th of September, 1892.

In re estate of LINA R. BINGHAM, late of Washington, D. C. No. 5129. Admn. Doc. 18.

Application having been made for the probate of a paper-writing propounded as the last will and testament, and for letters testamentary on the estate of said Lina R. Bingham, deceased, and for a commission to take testimony of non-resident subscribing witnesses to the said will and testament by Emma M. Gillett.

Notice is hereby given to all concerned to appear in this court on Friday, Oct. 14th, 1892, at 1 o'clock p. m., to show cause, if any exist, against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter once in each of three successive weeks before said day.

By the Court. W. S. COX, Justice.
True copy. Teste. L. P. WRIGHT, Reg. of Wills, D. C.

Legal Notices**This is to Give Notice**

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of SARAH ROBINSON, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 3rd day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 15th day of September, 1892.

38 JOHN E. LITTLE,
WM. D. HENRY.
Wm. D. Henry, Proctor.

No. 5023. Admn. Doc. 18.

407 R St., n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphan's Court Business.

Sept. 16th, 1892. No. 4609. Admn. Doc. 17.

In the case of Charles C. Glover, Executor of GILLET F. WATSON, deceased, the executor aforesaid has, with the approval of the court, appointed Friday, the 21st day of October, A. D. 1892, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the executor will take the benefit of the law against them.

Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test:

L. P. WRIGHT,
Register of Wills for the District of Columbia.

38 Arthur T. Brice, Proctor.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration c. t. a. on the personal estate of WILLIAM S. GRAHAM, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of September, 1892.

38 LOUISA GRAHAM.
Geo. F. Graham, Proctor, 1319 F St. n. w.
No. 5042. Admn. Doc. 18.

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration c. t. a. on the personal estate of BASIL BEALL, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of September, 1892.

38 GEORGE JACOBS.
Gordon & Gordon, Proctors.
No. 5108. Admn. Doc. 18.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

This 16th of September, 1892.

In re estate of LINA R. BINGHAM, late of Washington, D. C. No. 5129. Admn. Doc. 18.

Application having been made for the probate of a paper-writing propounded as the last will and testament, and for letters testamentary on the estate of said Lina R. Bingham, deceased, and for a commission to take testimony of non-resident subscribing witnesses to the said will and testament by Emma M. Gillett.

Notice is hereby given to all concerned to appear in this court on Friday, Oct. 14th, 1892, at 1 o'clock p. m., to show cause, if any exist, against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter once in each of three successive weeks before said date.

38 By the Court.

W. S. COX, Justice.

A true copy. Teste. L. P. WRIGHT, Reg. of Wills, D. C.

Legal Notices**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

Holding a Special Term for Orphans' Court Business,

This 16th of September, 1892.

In re Estate of MARY COVER PERRY, late of the District of Columbia, dec'd. No. 5184. Admn. Doc. 18.

Application having been made for letters of administration on the estate of said Mary Cover Perry, deceased, by George C. Brown.

Notice is hereby given to all concerned to appear in this court on Friday, October 14th, 1892, at 12 o'clock a. m., to show cause if any exist against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter once in each of three successive weeks before said day.

By the Court.

W. S. COX, Justice.

A true copy. Teste: L. P. Wright, Reg. of Wills D. C.

38 C. M. & H. S. Matthews, Proctors for applicant.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

Sept. 16th, 1892. No. 4554. Admn. Doc. 17.

In the case of Louise F. Hurley, administratrix of Caroline Knodel, deceased, the administratrix aforesaid has, with the approval of the court, appointed Friday, the 14th day of October, A. D. 1892 at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the administratrix will take the benefit of the law against them.

Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test:

L. P. WRIGHT.

Register of Wills for the District of Columbia.

38 Edwards & Barnard, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Cora L. Harrison

v. { In Equity. No. 14,049.

George H. Harrison.

On motion of the complainant by A. B. Webb and Samuel D. Truitt, her solicitors, it is this 15th day of September, A. D. 1892, ordered that the defendant, George H. Harrison, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for an absolute divorce on the grounds of desertion and cruelty.

W. S. COX, Justice.

A true copy. Test: J. R. Young, Clerk.

38 [Filed Sept. 15th, 1892.] By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Thomas B. Jackson and others

v. { In Equity. No. 14,078.

Henry G. Gist.

The trustee, William A. Easterday, having reported the sale for six thousand (\$6,000) dollars, all cash, to Michael A. and Patrick Dugan, of the east thirty feet fronting on Bridge street of lot numbered thirty-six, in Georgetown and known as No. 3300 Bridge or M street, it is this 21st day of September, A. D. 1892, ordered that the said sale shall stand finally ratified and confirmed on Thursday, October 20, 1892, unless good cause to the contrary be shown on or before that day.

Provided, however, this order be published once a week for three successive weeks prior to that date in the Washington Law Reporter.

W. S. COX, Justice.

A true copy. Test: J. R. Young, Clerk.

38 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Benjamin Butterworth, Admr. c. t. a. of the estate of Susan Walker, deceased, vs. E. Otis Kendall et al.

No. 13,731. Equity.

The trustee in this cause having reported that he has sold the real estate described in this cause at the price of 52½ cents per square foot, it is this 19th day of Sept., 1892, ordered, that said sale be confirmed unless cause to the contrary be shown on or before the 16th day of October, 1892.

Provided, that a copy of this order be published in the Washington Law Reporter once a week for three weeks before said date.

By the Court.

W. S. COX, Justice.

A true copy. Teste: J. R. Young, Clerk.

38 By R. J. Meigs, Jr., Asst. Clerk.

The Washington Law Reporter.

ESTABLISHED 1874.

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[WEEKLY]

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WASHINGTON, D. C., - - - OCTOBER 13, 1892

Supreme Court of the District of Columbia.

IN GENERAL TERM.

JOSEPH BARNES

v.

JOHN P. BARNES.

1. Where the complainant, who was an old man, conveyed to his son his entire property, consisting of about two acres of land and a house thereon, for the consideration that the son should support the complainant and his wife for the remainder of their days, it was held, that the son's obligations in such a case could not cease until an actual, sincere tender of service was made and refused.
2. That the duty of rendering the consideration for which he held the land could not cease until he should be prevented by the plaintiff from performing it.
3. That the defendant can hardly be credited with "readiness and willingness" to support, when the complainant continued to cultivate the patch on which both were living, precisely as he had done before the defendant came there, and obtained other means of support by making meat skewers for butchers, and finally went to a charitable institution for his support. The court does not perceive that any burden of life was lifted from the old man's shoulders by the actual situation.
4. Among the unexpressed, but necessarily implied obligations of such engagement, to furnish support during the remaining days of a grantor, is the duty of decent sepulture; but the court finds that when the mother died, the defendant contributed only one-half of the forty dollars which her burial cost, while the complainant furnished the other half. Nothing in this case is more significant of readiness on the defendant's part to allow the complainant to continue the struggle of life.
5. The court is required to enforce the plain obligations of trusts; and conveyances of this kind are regarded substantially as trusts.
6. One who receives property under an obligation to furnish the donor a support from that source, must hold it for application to that duty, and if he refuses or fails to so apply it, his continued possession is a fraud.
7. The court is of the opinion that the defendant's retention of the property is a violation of the trust on which he received it, and that it should be restored.

In Equity. No. 12,467. Decided March 28, 1892.

Chief Justice BINGHAM and Justices Cox and JAMES sitting.

Mr. T. A. LAMBERT for complainant.

Messrs. COOK & SUTHERLAND, for defendant.
Mr. Justice JAMES delivered the opinion of the Court:

The complainant seeks a rescission of his former conveyance to the defendant of a lot of land, containing about two acres, near Rock Creek Park.

It appears that the complainant was an old man at the time of this conveyance, that this little patch and the house on it were all the property he possessed, that his old wife was living, and that the defendant was one of their four adult children. The consideration stated in the deed is one hundred dollars, but the scrivener who drafted it testifies that the defendant, by whom he was employed, told him, at that time, that he was to support the old people for the remainder of their days. The defendant denies that he said this was the consideration of the conveyance, and declares that he only said he was willing to support them. We believe the scrivener. The old man, though obstinate and queer, does not appear to have been silly. It is incredible that he should sell everything he had for a hundred dollars, while it is natural that he should do so for a support. We believe the scrivener.

At the time of this conveyance, and for nearly two years afterwards, the defendant was not living with the old people nor on the premises. A daughter, with her husband, lived in the house with them. When they learned that this conveyance had been made they moved away, and the defendant, with his family moved in.

We are satisfied that the defendant had done nothing before that time for the support of the old people, but there is some dispute about the extent to which he did so after moving into the property. The mother became bed-ridden, and it appears that the old man alone ate at the defendant's table. For some reason he ceased to do so, and retired to the single room which constituted his part of the house, and there he cooked meals for himself and his wife so long as she lived, and after her death for himself. The defendant claims that this was a whim of the old man's and that the latter substantially refused to be supported. It does not appear, however, that the defendant ever offered to look after the old people after his father withdrew, and it is pretty plain that they were simply left to take care of themselves. The son's obligations in such a case could not cease until an actual, sincere tender of service was made and refused. The duty of rendering the consideration for which he held the land could

not cease until he should be prevented by the other party from performing it. That principle is recognized in numerous cases of this kind. In one of them, reported in 1st Ohio State, it was distinctly held that the due support must be offered, not left to be supplicated. The defendant in the present case can hardly be credited with "readiness and willingness" to furnish such support when we find that the complainant continued to cultivate the patch on which both were living, precisely as he had done before the defendant came there, and obtained other means of support by making meat skewers for butchers. We do not perceive that any burden of life was lifted from the old man's shoulders by the actual situation.

Among the unexpressed, but necessarily included obligations of this kind of engagement, to furnish support during the remaining days of a grantor, is the duty of decent sepulture; but we find that, when his mother died, the defendant contributed only half of the forty dollars which her burial cost, while the complainant furnished the other half. With the estate which would have borne this expenditure he took the burden. Nothing in this case is more significant of readiness on the defendant's part to allow the complainant to continue the struggle of life.

At last the friends of the complainant advised him that he could have rest and relief at the home of the Little Sisters of the Poor. After considering their suggestions for some days he went there. For a whole year the defendant, who was still living on what should have been the old man's means of self support, did not visit him in his refuge to learn whether he would return. His explanation was, that his father would do just as he pleased anyhow, and it was no use to go. When this bill was filed he did go. It seemed worth while then to try the firmness of this alleged willfulness.

It would be unreasonable to apply a delicate standard to lives pinched by hardship, but we are required to enforce the plain obligations of trusts; and conveyances of this kind are regarded substantially as trusts. One who receives property under an obligation to furnish the donor a support from that source must hold it for application to that duty, and if he refuses or fails to so apply it, his continued possession is a fraud.

Without imputing any conscious fraud in this case, we think this defendant's retention of the property conveyed to him by the complainant is a violation of the trust on which he received it, and that it should be restored. A decree will be framed according to this opinion.

Court of Appeals of Maryland.

APRIL TERM.

JESSE HEWES AND ANN A. HEWES, HIS
WIFE.

v.

THE PHILADELPHIA, WILMINGTON AND
BALTIMORE RAILROAD COMPANY.

The fact that a railroad company carries a passenger beyond his destination does not of itself establish a presumption that the carrier has failed in the performance of its duty.

Decided June 7, 1892.

Justices MILLER, ROBINSON, IRVING, BRYAN, McSHERRY
and FOWLER, sitting.

APPEAL from the Circuit Court for Cecil County.

Mr. Justice BRYAN delivered the opinion of the Court:

Hewes and wife brought an action against the Philadelphia, Wilmington and Baltimore Railroad Company. The evidence for the plaintiffs tended to show that the female plaintiff was a passenger in the defendant's cars to be carried from Perryville to Havre de Grace; that she took passage on the train, which, by the schedule, was due at Perryville at 7.50 o'clock p. m. and at Harve de Grace at 7.57 p. m., that the train did not stop at Harve de Grace and she was carried on to Baltimore, that she was without any money and had never been in Baltimore and had neither friends nor acquaintances there; that the night was dark and stormy; that she was carried on to Baltimore; that she was obliged to remain in the depot there until she could return to Harve de Grace; that she returned in a train that night and did not reach her home in Harve de Grace until after midnight and that in consequence of exposure to the weather, fatigue and the fright and annoyance caused by her unprotected condition she endured great mental and physical suffering and her health was permanently injured. The evidence for the defendant tended to show that the train did stop at Harve de Grace and that the conductor stopped the train at Aberdeen and told Mrs. Hewes that a train would come along in a few minutes, which would take her back to Harve de Grace, and that she refused to leave the car and was carried on to Baltimore; that the run from Aberdeen to Harve de Grace occupied from seven to nine minutes. The jury rendered a verdict for the plaintiffs and assessed the damages at one cent and they appealed.

As we have no control over the verdict, it would be irrelevant to make any comments upon it. Our attention must be confined to

the rulings made by the court upon the prayers submitted by the opposing counsel for the instruction of jury.

Three prayers were offered by the plaintiffs and one by the defendants. The first prayer asked the court to instruct the jury that if the defendant did not stop its cars at Havre de Grace long enough for the female plaintiff, using reasonable diligence, to leave the train with safety after she knew, or by the exercise of reasonable care, might have known that it had stopped for the discharge of passengers whose destination was Havre de Grace, and that in consequence she was carried a number of miles beyond Havre de Grace, then she was entitled to recover. The plaintiffs offered a second prayer and also a third prayer. The bill of exceptions states as follows: "The court granted plaintiffs' first prayer, but refused to grant their second prayer unless the same was amended, and rejected their third prayer."

Plaintiffs then offered the second prayer again with the following addition. The addition to the prayer is then stated. The bill of exceptions proceeds as follows: "The court then granted plaintiffs' second prayer as amended, and granted defendant's prayer. To the action of the court in granting defendant's prayer, and in rejecting their third prayer, the plaintiffs excepted, and prayed the court to sign and seal the bill of exceptions, which is done accordingly this 20th day of January, 1892." We understand the appellants to contend that an exception was taken to the refusal of the court to grant the second prayer in its original form. We have quoted what appears in the bill of exceptions on this point, and we find it very expressly and clearly stated that the exception was confined to the rejection of the third prayer and the granting of defendant's prayer. The plaintiff's third prayer maintained that if the female plaintiff was carried beyond Havre de Grace to the city of Baltimore, then the defendant was *prima facie* guilty of negligence. The defendant's prayer insisted that the jury could not find a verdict for the plaintiff; unless the train did not stop at Havre de Grace, or did not stop long enough for the female plaintiff, using reasonable diligence to leave the car. These prayers may conveniently be considered together. When a carrier undertakes to transport goods to a certain point, he is bound to deliver them at the designated place, and if he fails to do so, he is in default.

He has broken his contract, in that he has not done that which he undertook to do. But there is no such absolute and unconditional duty to

discharge passengers at their destination. He must, of course, inform them that the end of their journey has been reached, and he must afford them proper and reasonable means and facilities for departing in safety from the vehicle of transportation. The traveller is possessed of volition and he may not choose to leave the vehicle; or he may through negligence and inattention disregard the opportunity to leave which has been given to him. It cannot be said that the carrier is bound to eject him, or to insist on his leaving against his will. The fact, therefore, that he has been carried beyond his destination, does not of itself establish a presumption that the carrier has failed in the performance of his duty. In the present case, the gravaman of the complaint is that the train did not stop long enough to enable the female plaintiff, by the use of reasonable diligence, to leave the cars in safety. The allegation must be established by proof. When a party has agreed to do a certain act, or to perform a certain work the law does not assume, without proof, that he has failed to perform his contract. For instance, if he contracts to build a house, it must be proven that he has not built it before it can be adjudged that he has broken his contract. If facts are shown which prove a definite and positive obligation on his part, he cannot be relieved from it, except by evidence which lawfully excuses and exonerates him from the performance of it. For instance, if it is shown that he had incurred a debt, he must prove payment, or some other matter of satisfaction or discharge.

In the present case if it had been the conductor's duty to remove Mrs. Hewes from the train at Havre de Grace, the defendant would be required to prove a lawful excuse for carrying her beyond that station. The appellants' counsel in their argument placed much reliance on a supposed analogy between the duty of the carrier to discharge passengers at their destination and his duty to provide for their safety while the journey was in progress. But the two conditions are by no means similar. From motives of humanity the law requires carriers of passengers to use the utmost care and diligence in guarding against accidents, which may endanger the lives and limbs of the persons whom they undertake to transport. In the application of this doctrine to railroads, it was said by this court in *B. & O. RR. Co. vs. Worthington*, 21 Maryland, 283, to include "the most exact care and diligence, not only in the management of the trains and cars, but also in the structure and care of the tracks, and in all the subsidiary arrangements necessary to the safety of the pas-

sengers." This is a measure of protection which a railroad company is obliged to extend to passengers. When, therefore, an accident occurs from any cause within these specified limits, the railroad company is *prima facie* guilty of negligence, and must rebut this presumption by showing that there was no failure of duty on its part.

The judgment must be affirmed.

Judgment affirmed.

Court of Appeals of the United States.

JOHN W. REDFIELD v. THE UNITED STATES.

Indian Depredations, Nos. 284 and 5787. Decided June 27, 1892.

Mr. Justice RICHARDSON, delivered the opinion of the Court:

The Assistant Attorney General files a motion to dismiss cause No. 284, accompanied by an affidavit of the claimant, which are as follows:

And now comes the Assistant Attorney General and moves the court to dismiss the above entitled cause, No. 284, and transfer the papers therein to No. 5787, for the reason that there is another action pending by the same claimant for the same cause of action, Indian Depredation No. 5787, and the claimant has elected to dismiss this case, No. 284, and to proceed with No. 5787, as will more fully appear by claimant's affidavit attached hereto in support hereof.

L. W. COLBY,
Assistant Attorney General.

John W. Redfield, being first duly sworn, on oath deposes and says:

That he is a citizen of the United States, residing in Glendale, county of Douglass and State of Oregon.

That he is the lawful owner of a claim for losses by depredations of the Rogue River Indians, in 1855; which claim was duly filed with the Commissioner of Indian Affairs, February 13, 1884, and was given file number 3196.

That he formerly employed B. F. Dowell as his attorney, but on account of dissatisfaction with services rendered revoked the said power of attorney to B. F. Dowell in the month of May, 1891, and at the same time executed a new power of attorney to Hughes & Weller as counsel for the Examiner Bureau of Claims.

That he duly notified the said B. F. Dowell of the revocation of his power of attorney, but in spite of said notification the said B. F. Dowell

still claims to represent this defendant in the Court of Claims.

That he has already paid the said B. F. Dowell for any and all services heretofore rendered.

That he desires and requests the honorable Court of Claims to dismiss case 284, brought in his name by B. F. Dowell, and to consider only case 5787, and recognize only Messrs. Hughes & Weller as his attorneys of record in the prosecution of said claim.

In witness whereof I hereunto affix my hand and seal this 29th day of February, 1892.

[SEAL] JOHN W. REDFIELD.

This brings directly before the court for judicial consideration a reprehensible practice which has arisen under the Indian Depredation Act (1 Supt. to R. S., 2d ed., 913) of claimant's multiplying cases through different attorneys for the same cause of action, and, whether done through their own ignorance or through solicitations of attorneys, is to be discountenanced and condemned. In some instances as many as three and four separate petitions have been filed by several attorneys holding powers of attorney of different dates. The defendants are harassed with a multiplicity of suits to be defended, and the court is trifled with by having its docket incumbered with so many unnecessary petitions and is subjected to the unpleasant duty of deciding upon unseemly controversies between attorneys.

Members of the bar, belonging to an honorable profession, are bound to conduct themselves towards each other with the utmost fairness, openness, and consideration. Their duties to clients, as well as to their professional brethren and to the public at large, require that course of conduct in order to preserve the high standard of the profession, to give no cause of complaints against them, and to avoid scandals which injure their own reputation and bring discredit upon the whole body.

When a client employs an attorney who brings suit for him the court acquires jurisdiction of the cause of action, the defendants come in to have their rights settled in that suit, and the plaintiff's attorney acquires a vested right to compensation for services performed.

The client may revoke his power of attorney upon notice duly given, but the acts of the attorney are binding until notice of revocation is received. He may discharge his attorney of record in a suit with permission of the court, on such terms as the court may prescribe, but after bringing one suit he can not institute another until the first is disposed of. It is in

the first suit that the issue between the parties must be tried.

A suit brought without authority may be dismissed on motion of the plaintiff in person or on motion of defendants because a judgment recovered in such suit would not be binding on the parties. But a suit brought with authority of the plaintiff must stand until tried on the issue raised or until dismissed in legal manner. The plaintiff himself can not dismiss his own suit until he has discharged his attorney with permission of the court, and when he has wrongfully brought several actions for the same cause he can not elect which one he will prosecute.

Applying these well-settled principles to the present cases, it is clear what the court must do.

It appears that Mr. B. F. Dowell, an attorney of this court, brought an action March 31, 1891 (No. 284), for the claimant, by authority of a power of attorney.

Subsequently the claimant gave another power of attorney to Messrs. Hughes & Weller, also attorneys of this court, and they filed another petition for the same cause of action, November 17, 1891, No. 5787.

It is proper to state that Mr. Dowell denies by affidavit the allegations of the claimant that he has been paid his fees, and that he has done any acts to give cause for dissatisfaction, and we have no reason to doubt the truth of his statements. He has long been a member of the bar in the State of Oregon, and he appears to have rendered valuable and faithful services for his client.

The circumstances under which the claimant was induced to give a new power of attorney to other attorneys, after Mr. Dowell had nearly completed his work by obtaining an award by the Secretary of the Interior, and had brought his action thereon, are not now for the court to consider, as we hold the second power, however obtained, to be inoperative to discharge the first suit.

The motion of the defendants to dismiss cause No. 284 is denied. The subsequent suit, No. 5787, will be disposed of when the subject is properly presented.

As to attorney's fees, we may say that upon entry of judgment an allowance to attorneys will be made *in proportion to the actual services performed and their value to claimants* without reference to any previous contracts between the parties.

The statute provides that "the allowances to the claimant's attorneys shall be regulated and

fixed by the court at the time of rendering judgment in each case, and entered of record as part of the findings thereof; but in no case shall the allowance exceed 15 per cent. of the judgment recovered, except in case of claims of less amount than \$500, or where unusual services have been rendered or expenses incurred by the claimant's attorney, in which case not to exceed 20 per cent. of such judgment shall be allowed by the court. (1 Supt. to R. S., 2d ed., p. 916.) This we regard as like the taxable costs in actions at common law which the parties themselves cannot fix by contract. (R. S., §§ 823, 824.)

District Court, D. Alaska.

LEAR v. UNITED STATES.

ABANDONMENT OF MILITARY Post—Sale of Buildings—Power of Secretary of War.—When a military post located upon lands belonging to the United States is abandoned, the Secretary of War has no power, in the absence of authority from Congress, to order a sale of the buildings, and such a sale is void.

At Law. Decided February 19, 1892.

ACTION by W. K. Lear against the United States for the recovery of money.

Mr. Justice BUGBEE, district judge, delivered the opinion of the court.

This action was brought under and by authority of section 2 of an Act of Congress entitled "An act to provide for the bringing of suits against the Government of the United States," approved March 3, 1887. From the admissions in the pleadings and from the evidence, which is entirely documentary, it appears that the material facts in the case are as follows: During the years 1868, '69, '70, the Government erected at Wrangell, then occupied as a military station, certain wooden buildings for the use and occupation of the United States soldiers at that place. In 1871 the site was abandoned as a military post, and by authority of the Secretary of War, and under the instructions of the Department Commander, the Chief Quartermaster advertised the buildings for sale. On or about the 23d of August, 1871, they were sold to the petitioner, Lear, for the sum of \$600, which was paid by him to the Government on December 19, 1871, and the property so sold was thereupon transferred by the military officers then occupying it, to petitioner, who remained for years thereafter in possession, and who still claims ownership of the same, by reason of such purchase. On August 1, 1875, Ft. Wrangell was re-established as a military post, and subsequently, during the period from August 1,

1875, to June 15, 1877, when the garrison was withdrawn, the buildings in question were re-occupied by the troops, as tenants of the plaintiff, and rent was paid to him by the Government at a rate fixed by a board of army officers appointed to tax the same. The same board also recommended the purchase of the buildings by the Government from petitioner for the price of \$7,000. On the 21st of June, 1884, the deputy collector of customs at Wrangell, acting under instructions from the Secretary of the Treasury, demanded of the petitioner the possession of the said buildings, claiming them as the property of the United States. The demand was not acceded to, and on the 15th day of June, 1884, the deputy collector took possession by force, and the property has ever since remained in the possession of the Government, and been used for civil purposes. It is not claimed that the Government has ever parted with its title to the land on which the buildings claimed by petitioner were erected. The prayer of the petitioner is: (1) For the sum of \$7,000, being the purchase price fixed by the military board, above mentioned. (2) If not allowed that sum, then that he be allowed rent from the time of his ouster by the Treasury Department. (3) If not allowed either amount, then that he be awarded the \$600 paid by him as purchase money on December 19, 1871, with interest at 6 per cent per annum from that date. In its answer the Government confesses that plaintiff is entitled to judgment for the amount paid for the property, with interest, but claims that petitioner is not entitled to any other relief asked for, because the sale was without authority of Congress, in violation of the Constitution of the United States, and therefore wholly void, and passed no title to plaintiff. The relief asked for in the first and second subdivisions, respectively, of the prayer could only be granted on the theory that the sale was a valid one, and that thereby the petitioner acquired, as against the United States, the full title to the property. No authority whatever has been produced, nor have I been able to find any law which will support such a theory. The sale was not authorized nor ratified by Congress, and I must therefore hold that it was void. Judgment, however, is given for petitioner for the amount confessed in the answer to be due, to wit, the sum of \$600, with interest at 6 per cent. per annum from December 19, 1871, and the costs of the clerk of the court, after issue joined.—*Federal Reporter.*

The Legal Responsibility of Lunatics—I.

CONTRACTS BY LUNATICS.—The question of how far, and under what circumstances, a contract entered into by a lunatic is voidable has come under the consideration of the Court of Appeal in England, in a case reported in a recent number of the English Law Reports: *Imperial Loan Co. v. Stone* (1892, 1 Q. B., 599). We propose briefly to review the decisions bearing upon this interesting subject. Blackstone defines "a lunatic" as a person who hath had understanding, but who, through disease, grief, or other accident, hath lost his reason (1 Bl. Com., 304). A person may be insane to such a degree that he is incapable of understanding an agreement: but the law presumes every person to be sane until the contrary is proved (*Leake on Contracts*, 247). The old doctrine was that no man of full age could be received in any plea to stultify or disable his own person. He could not set up his own lunacy, such as that he did not know what he was about in contracting (L. S., 405; *Beverley's case*, 4 Rep., 123). In modern times this rule had been relaxed, and unsoundness of mind was held to be a good defense in the case of an executed contract when it could be shown that when the contract was made the alleged lunatic was not of a capacity to contract, and the plaintiff knew this when the contract was made. *Moulton v. Camroux*, 2 Ex., 487; 4 Ex., 17. It is questionable whether a person of unsound mind would be held liable on an executory contract (per Abbott, C. J., *Baxter v. Earle of Portsmouth*, 5 B. & C., 170). A court of equity will not grant specific performance of a contract made by a person in a state of insanity, although the other party had no notice of the insanity, and took no advantage of it. *Hall v. Warren*, 9 Ves., 605; *Frost v. Beavan*, 17 Jur., 389. The court, however, will not set aside a contract on the mere ground of the insanity of one of the parties, the other party having dealt with him on the faith of his being of competent understanding. *Neill v. Morley*, 9 Ves., 487. On the other hand, the court will grant specific performance of a contract made during a lucid interval, notwithstanding subsequent insanity, provided the remedy can be given; no act of the insane person being required, such as a conveyance, unless the plaintiff were willing to dispense with it. *Owen v. Davies*, 1 Ves. Sen., 82.

Imbecility of mind—apart from other circumstances, such as fraud, duress, &c.—is not sufficient to render a contract void, even in the case of an executory contract, unless an essential

privation of the reasoning faculties or an incapacity of understanding and acting with discretion in the ordinary affairs of life results therefrom. Such incapacity has been said to afford the true test of that unsoundness of mind which will avoid a deed at law. The law (which in this context is not used as contra-distinguished from equity) cannot undertake to measure the validity of contracts by the greater or less strength of the understanding, and if the party be *compos mentis* the mere weakness of the mental powers does not incapacitate him. Weakness of the understanding may, however, be a material circumstance in establishing an inference of unfair practice or imposition, and it will naturally awaken the attention of a court of justice to every unfavorable appearance in the case (Kent Com. 12th ed., vol. 2, 609).

As regards the circumstances which will enable a lunatic or his representatives to rescind an executed contract, the following principle has been laid down in the case of *Moulton v. Camrou* already referred to: "When a person apparently of sound mind, and not known to be otherwise, enters into a contract for the purchase of property which is fair and *bona fide*, and which is executed and completed, and the property the subject matter of the contract has been paid for and fully enjoyed, and cannot be restored so as to put the parties *in statu quo*, such contract cannot afterwards be set aside, either by the alleged lunatic or those who represent him." In the leading Irish case upon this subject there has been the following decision: "The rule, both of law and equity, as to a contract entered into by a person apparently of sound mind, and, though in fact insane, not known to the other party to be insane, is, that such a contract if fair, *bona fide*, and completely executed, is valid; and, even though such a contract might be void at law, it will be set aside in equity for fraud only. The ordinary presumption of sanity is removed by an inquisition finding a person to be of unsound mind; and in the case of a contract subsequently entered into by him, the burden of proof is shifted; but the finding usually being *ex parte* is not conclusive, and the court has jurisdiction—which, however, it will be slow in exercising—to arrive at a contrary conclusion without the aid of another jury. To vitiate a contract the knowledge of the lunacy must be not necessarily actual knowledge, but presumably sufficient—from circumstances known to the opposite party—to lead him to a reasonable conclusion that he had been deal-

ing with a person of unsound mind. *Hassard v. Smith*, V. C., 6 Eq., 623. It has been doubted whether in a contract for necessaries supplied to a lunatic where there was knowledge of the lunacy, the contract will be upheld. *Baxter v. Earl of Portsmouth*, per Brett, L. J., 5 B. & C., 170.

In the most recent reported case upon the subject—*The Imperial Loan Co. v. Stone*, 1892, 1 Q. B., 599—an action was brought on a promissory note, which the defendant, who had been found a lunatic after the making of the note, had signed as a surety. The statement of defense alleged that the defendant when he signed the note was so insane as to be incapable of understanding what he was doing, and this allegation was repeated, with the following allegation added: that the insanity of the defendant was known to the plaintiffs. The case was tried by Denman, J., who left the following questions to the jury: (1) Whether the defendant, when he signed the note, was so insane as not to understand what he did? (2.) Whether this incapacity was known to the agent of the plaintiffs, who was present at the time of the signing of the note? The jury answered the first question in the affirmative, but could not agree upon the second. The Judge thereupon entered a verdict for the defendant. The plaintiffs upon appeal applied for judgment or for a new trial, and the Court of Appeal, consisting of Lord Esher, M. R., Lopes and Fry, L. J. J., were unanimous in granting a new trial on the ground that the verdict of the jury had not been taken on the question as to the knowledge of the plaintiffs, by their agent, of the defendant's incapacity to transact business. The judgment of Lord Esher is most instructive, dealing as it does with contracts both executed and executory. He says, "When a person enters into a contract and afterwards alleges that he was so insane at the time that he did not know what he was doing, and proves the allegation, the contract is as binding on him in every respect as if he had been sane, whether the contract is executed or executory, unless he can prove that the person with whom he made the contract knew him to be so insane as not to know what he was about." The case, although not deciding any new point of law, is worthy of notice from the fact that it clearly summarises an important branch of the law, upon which there has not been, so far as we are aware, any very recent decision.—*Irish Law Times*.

THE following good story is told of Rufus Choate: One morning when he entered his office his clerk rose and said: "Mr. Choate, a gentleman has just left here who wants you to undertake a case for him." "Ah! And did

you collect the regular retaining fee?" "I only collected \$50, sir." The regular fee was \$100, and in a reproving tone Mr. Choate said: "But, sir, that was unprofessional—yes, very unprofessional." "But, sir," said the clerk apologetically, and anxious to exonerate himself from the charge, "I got all he had." "Ah," said Mr. Choate, with a different expression, "that was professional—yes, quite professional.—*Green Bag.*"

Supreme Court of Pennsylvania.

WASHINGTON BOROUGH v. McGEORGE.

1. If the title of an act gives to all persons interested, ample notice of the subject of the act, sufficient to lead them to an inquiry into the body of the bill, nothing more is required.
2. Where the several parts of an Act of Assembly are germane to the general subject, such parts are sufficiently covered by a title expressing the general subject of the act.

Decided January 4, 1892.

APPEAL of D. W. McGeorge, defendant, from the judgment of the Court of Common Pleas of Washington County, upon a case stated, wherein the burgesses and inhabitants of the borough of Washington were plaintiffs and D. W. McGeorge was defendant, to recover a license tax on hacks, carriages and other vehicles carrying property or persons for pay.

In the spring of 1890, the borough council of Washington, Pa., acting under the authority of Act of 22d April, 1889, entitled, "A further supplement to an act regulating boroughs, approved the 3d day of April, 1851, authorizing the corporate authorities to levy and collect a license tax on hacks, carriages and other vehicles carrying persons or property for pay," enacted an ordinance imposing a license tax on all hacks, carriages, omnibuses, wagons and all other vehicles used upon the streets and alleys of said borough in carrying persons and property for pay, and imposing a penalty of \$20, for using any vehicle for such purpose without first having paid such license; said penalty to be collected by suit in the name of the borough before the chief burgess or any justice of the peace, one-half of the penalty to be paid for the use of the person making the information, and the other half for the use of the borough.

About May 1, 1891, suit was instituted before C. M. Rupile, Esq., a justice of the peace in said borough, against a number of citizens who had not taken out said license and who denied the right of the borough to pass said ordinance; and who denied the constitutionality of Act of

22d April, 1889; and who denied that said ordinance is in conformity with said act, and who denied that suit for recovery of the amount of said license fee was properly instituted before a justice of the peace, not for the amount of the penalty, but for the amount of said license tax.

To avoid a multiplicity of suits and the expense of litigation where the amount involved was so small, it was agreed that a case stated involving all the foregoing points be presented for the opinion of the court, wherein the borough was made plaintiff and D. W. McGeorge defendant.

An amicable action of *assumpsit* upon a case stated was entered, the case stated setting up that the borough of Washington was duly incorporated under the laws of Pennsylvania, and possessed the powers and privileges conferred upon boroughs by the Act of April 3, 1851, P. L., 320, that in January, 1890, and by an amendment in April, 1890, the borough of Washington enacted an ordinance as above set forth, that the defendant was owner in 1890 of sundry wagons which he kept for hire and hauled property for pay within said borough, without having first gotten out a license under the ordinance aforesaid.

The questions came before the court to decide, which were as follows :

1. Is the Act of Assembly approved April 22, 1889, constitutional?
2. Is the ordinance in conformity with said act? and
3. Can the license fees due from the defendant be recovered by a suit before a justice of the peace?

The court, McIlvaine, P. J., entered judgment for the plaintiff upon the case stated, whereupon the defendant appealed, assigning for error, *inter alia*, this action of the court.

Mr. Justice STERRETT delivered the opinion of the Court :

The facts recited in the case stated, presented, for the consideration of the court below, three questions :—

1. Whether the Act of April 22, 1889, therein referred to, is constitutional.
2. Whether the borough ordinance conforms to the act.
3. Whether payment of the license tax due by defendant, under the provisions of the ordinance, can be enforced by suit before a justice of the peace.

These questions were rightly answered in the affirmative, and judgment on the case stated was accordingly entered in favor of the plaintiff.

The act in question is entitled, "A further

supplement to an act regulating boroughs * * * authorizing the corporate authorities to levy and collect a license tax on hacks, carriages and other vehicles, carrying persons or property for pay," etc.

The first section of the act empowers the council of every borough "to enact ordinances establishing reasonable rates of license tax on all hacks, carriages, omnibuses, and other vehicles, used in carrying persons or property for pay, and limit the compensation for the same within the limits of said borough."

The second section provides, "That said ordinance shall be enforced as other borough ordinances are by law enforced, and the license tax shall be collected as other licenses, taxes, fines and penalties, are now authorized by law to be collected."

The power of the Legislature to pass such an act cannot be questioned. There is nothing, either in the title or the body of the act, that offends against any provision of the Constitution. The title gives to all persons interested ample notice of the subject of the act; quite sufficient, at least, to lead them to an inquiry into the body of the bill. Nothing more than that is required: County Home's Appeal, 77 Pa. St., 80. The power, given in the body of the bill, to limit compensation, etc., cannot be regarded as a distinct subject from that clearly expressed in the title. On the contrary, it is germane on that subject, and hence the act is not in conflict with section 3, Article III, of the Constitution: Millvale Borough v. Railway Co., 131 Pa. St., 1.

We are also of opinion that the borough ordinance sufficiently conforms to the act; and also that suit for the collection of the license tax was properly instituted before a justice of the peace.

There was no error in entering judgment in favor of the plaintiff.

Judgment affirmed.



WHEN Grattan was a young student, he was fond of practising oratory in a certain wood, in a part of which was a gallows from which depended the rusty chains in which a criminal had been hung many years before.

When he was once apostrophizing this melancholy object, a stranger came up unperceived behind him and said to him:

"How the devil did you get down?"

The young orator coolly replied: Ah, sir, you have an interest in that question!"—*The Bench and Bar of Ireland.*

Supreme Court of Appeals of Virginia.

WEBSTER v. COMMONWEALTH.

SELLING LIQUOR WITHOUT LICENSE—"Local Option."—A person selling liquor in a county which has adopted the "Local Option Law," (Code 1887, Ch. 25,) is none the less liable to prosecution for selling liquor without a license, in violation of the general revenue laws.

Decided July 16, 1892.

ERROR to Montgomery County Court. Opinion states the case.

Mr. Justice FAUNTLEROY delivered the opinion of the Court:

The petition of Joshua Webster complains of the judgment of the Circuit Court of Montgomery County, affirming a judgment of the County Court of the said county, by which, at the September term thereof, 1891, the said Joshua Webster was fined \$100, and sentenced to confinement in the county jail for a term of one month. At the July term, 1891, of the County Court of Montgomery, the plaintiff in error was indicted for selling ardent spirits and liquors by retail, not to be drunk where sold, in the town of Christiansburg, in Christiansburg Magisterial District of said county, he, the said Joshua Webster, not then and there having a license to sell the same according to law.

At the September term, 1891, of the said court, the accused was tried and found guilty by a jury, who assessed his fine at \$100; whereupon the accused moved the court to set aside the verdict, and grant him a new trial, which motion the court overruled, and adjudged that the Commonwealth recover of the defendant, Joshua Webster, \$100 for fine, and her costs, and that the said Joshua Webster be confined in the county jail of this county for the term of one month.

From this judgment of the County Court of Montgomery County the case was carried by writ of error to the Circuit Court of the said county, which by its judgment on the 5th day of December, 1891, affirmed the judgment of the County Court aforesaid. The case is brought to this court by a writ of error to the judgment of the Circuit Court. There was a demurrer to the indictment, on the ground that it was for a violation of Sec. 1, Ch. 2, Acts Assem. 1889-'90, p. 242, known as the "Tax or Revenue Law;" while the county of Montgomery is alleged to be under the local option law, (chapter 25, Code 1887.) The court properly overruled this demurrer. There was a motion to set aside the verdict and grant a new trial, because the verdict was contrary to the law and the evi-

dence, which motion the court overruled. The facts are certified, and the proof is positive and complete that the plaintiff in error did violate the express law, as charged in the indictment; and the court did not err in overruling the motion to set aside the verdict. There is no error in the judgment of the Circuit Court, affirming the judgment of the County Court of Montgomery, County, and our judgment is to affirm the same.

Judgment affirmed.

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Attorneys.

A contract by an attorney to carry cases through the courts of the Territory and to the United States Supreme Court, for a specified compensation, does not require him to perform without additional compensation services in securing writs of mandamus from the latter court to compel the territorial court to hear and determine the cases on their merits; nor to file a petition in the territorial courts for a rehearing on the question of dismissal, requested by the client, as a necessary preliminary measure to securing such writs; nor in preparing an abstract of the testimony required by the United States Supreme Court because of the voluminousness of the testimony, after the case had been argued and submitted in that court, especially where such work is purely clerical. *Isham v. Parker*, 3 Wash., 755, 29 Pac. Rep., 835.

An attorney is not liable for the loss of a case not occurring from want of a reasonable amount of skill or knowledge, or from failure to exercise it, or from negligence on his part. *Supra*.

An attorney appointed solely to procure a deed left in the custody of the grantor's attorney for delivery at the grantor's death cannot bind his client by appearing and acting for him in proceedings to partition the land conveyed by the deed. *Re Van Emon's Estate* (Pa. Orph. Ct.) 22 Pitts. L. J. N. S., 423.

Attorneys have no authority to sell, transfer, or assign a judgment belonging to a client, although they can employ local counsel at a distance to aid in collecting it. *Lewis v. Blue*, 110 N. C., 420, 15 S. E., 196.

An attorney summoned by a client to go from a place away from his residence to another can recover as traveling expenses only such amount as would have been expended had he gone from his residence. *Isham v. Parker* (Wash.) 29 Pac. Rep., 835.

The employment by a client of additional counsel cannot, in the absence of a special

agreement to that effect, operate to reduce the compensation of counsel who have contracted to conduct the cause in which they are employed for a specified price. *Isham v. Parker* (Wash.) 29 Pac., 835.

An attorney who brings an action in the name of a client who does not exist, though done in perfect good faith, is liable to the defendant for costs. *Attleboro Nat. Bank v. Wendell* (Sup. Ct.) 46 N. Y., S. R. 140, 19 N. Y. Supp., 45.

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Illiteracy in Great Britain.

THE "Illiterate" return is very interesting. Its successor will be still more interesting, covering as it will the period of the general election. The present return shows the number of persons who voted as "illiterates" at elections in the United Kingdom from the 9th April, 1891, to the 20th June, 1892. The general summary is as follows: In England and Wales the number of illiterate voters was 1,996, out of a total number of votes polled, 138,728; in Scotland the illiterates were 64, and the aggregate number of voters was 13,464; but in Ireland the percentage was nearly 1 in 11, the number of illiterates being 2,132 out of 22,942. In England the illiterates were 1,561 out of 96,599; in the counties the Stowmarket division of Suffolk headed the poll with 392 illiterates out of 8,478 voters, and the Wisbech division of Cambridgeshire stood next with 228 illiterates out of 7,698 voters. In the English boroughs the total number of illiterates was 435 out of 42,129 voters, Walsall showing the highest figure with 198 illiterates out of 9,294 voters. In Scotland, counties and boroughs, 53 out of the 64 illiterates were contributed by Paisley. Contrast these moderate figures with those of Ireland, where there were four bye elections contested. County Carlow contributed 829 illiterates out of 5,391 voters; Cork city, 778 out of 7,107; Waterford city, as many as 371 out of 3,033, and East Belfast, 164 out of 7,411. In round figures the number of illiterate voters in England and Wales was 1 in 70, in Scotland 1 in 210, while in Ireland it was 1 in 11. The return is an object lesson for those who are skeptical of the influence of the priests. —*London Law Times*.

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Humors of the Law.

"For he is not to be hanged because he would not stay to be burnt," is a ruling concerning a prisoner who escaped from a prison on fire, cited by Plowden to illustrate cases within the letter of the law, but not within its spirit.

For an attorney to call the adverse party "a sugar-loaved, squirrel-headed Dutchman," is not thought to be polite in Missouri, and the picturesque language of the lawyer was fatal to his case on appeal.

The Irish Law Times quotes from the Daily News a reference to an American judge who volunteered the information that "this court was unhappily addicted to the use of ardent spirits when it was a young man," but it was careful to add that "it had never made drunkenness an excuse for crime."

American Bar Association.

At the recent annual meeting of the American Bar Association held in Saratoga, N. Y., two handsome gold medals of honor were presented, one to Hon. David Dudley Field, of New York, and the other to Roundell, the Earl of Selborne, of the English Bar. The medals are in recognition of the eminent services rendered by these gentlemen in the science of jurisprudence. The obverse side of the medal bears a sitting figure of Justice, sword in right hand, scales in left, in bold relief. Encircling the figure are the words in raised letters: "The American Bar Association. Founded A. D. 1878."

The reverse of one of the medals is:

1891.

Awarded to
Roundell, Earl of Selborne,
for
Distinguished Services in
Advancing the Science of
Jurisprudence.

The reverse of the other is:

1891.

Awarded to
David Dudley Field
for
Distinguished Services in
Advancing the Science of
Jurisprudence.

All the wording except the date and name, which are engraved, is in relief. The medals have been forwarded to the distinguished jurists, together with appropriate letters.

—*Daily Record, Balto.*, September 21.

THE COURTS.**Supreme Court of the District of Columbia.****AT LAW—New Suits.**

September 27, 1892.

33310. F. B. Parker v. Julius Lansburgh. Account, \$417.50. Pliffs. atty., H. B. Moulton.

33311. Deeble, Davis & Co. v. Wash. T. Nailor, Judgment of Justice Taylor, \$52.75.

33312. Deeble, Davis & Co. v. Wash. T. Nailor, Judgment of Justice Taylor, \$53.75.

September 28.

33313. Whittier Machine Company v. Harvey Spalding. Note, \$200. Pliffs. attys., Worthington & Head.

33314. Isaac P. Childs v. John Lyon. Account, \$130. Pliffs. atty., T. M. Fields.

33315. Josephine R. Reid v. Nelson J. Hillman. Replevin. Pliffs. atty., W. W. Willoughby; Defts. attys., Bright & Fay.

33316. L. C. Caruthers v. Anna Lynch. Ejectment. Pliffs. atty., Jno. Ridout.

33317. The Accumulator Co. v. The Eckington and Soldiers' Home RR. Co. of the D. C. Account, \$45,000. Pliffs. atty., Jas. K. McCammon, Reginald Fendall, Jas. H. Hayden and Biddle & Ward.

IN EQUITY.—New Suits.

September 24, 1892.

14202. The Barber Asphalt Paving Co. v. The District of Columbia, The Schillinger Paving Co. and The Cranford Paving Co. For injunction. Com. sol., A. S. Worthington. Defts. attys., George C. Hazleton, S. T. Thomas, and Bright & Fay.

14203. H. B. Wingfield v. J. Wingfield. For divorce. Com. sol., E. B. Hay.

September 26.

14204. Whitfield McKinlay v. R. H. Andrews et al. Judgment creditors' bill. Com. sol., J. H. Smith.

14205. Edward R. Campbell v. Abbie Campbell. For divorce. Com. sol., J. J. Wilmarth.

14206. Mary H. Hellen v. L. Louisa Helen et al. To confirm contract of sale. Com. sol., W. W. Boarman.

September 27.

14207. Mary C. Pettit v. T. R. Bean et al. For partition. Com. sol., A. H. Hoebling, Jr. Defts. sol., Jno. A. Clarke.

14208. Mary S. Day v. Hamilton Day. For divorce. Com. sol., C. Carrington.

14209. Hester A. Sweet v. Austin C. Sweet. For divorce. Com. sol., H. B. Moulton.

September 28.

14210. Isaac P. and Chas. Childs v. William Pabst et al. To enforce mechanic's lien No. 2873, sub-lots 122 to 130, Square 1051.

14211. W. F. Salter et al v. Osborne Dorsey et al. Com. sol., W. P. Williamson.

September 29.

14212. Mary J. Coker v. O. D. Gass et al. To correct deed. Com. sol., H. B. Moulton.

14213. Rosa J. Menikheim et al v. W. H. White. For injunction. Com. sol., A. C. McNulty.

14214. S. M. Moore et al v. Charles Abert, executor. To construe will. Com. sol., R. B. B. Chew. Defts. sols., Abert & Warner, and Wm. Stone Abert.

14215. Jno. Q. A. Houghton v. Jno. C. Collahan. Injunction. Com. sols., Cook & Sutherland and J. M. Vale. Defts. sols., Allan Rutherford and J. H. Lichliter.

September 30.

14216. W. P. Ellison et al v. E. G. Schafer, administrator, and the marshal of the District of Columbia. To foreclose deed of trust. Com. sol., A. S. Worthington.

14217. George Lovelace v. Harry King, Jr. Injunction. Com. sol., D. W. Glassie. Defts. sol., E. H. Thomas.

14218. Geo. C. Ohren v. Annie E. Ohren. For divorce. Com. sol., D. W. Glassie. Defts. sol., J. Altheus Johnson.

October 3.

14219. Chas. Jackson v. Saml. Jackson. For divorce. Com. sol., E. M. Hewlett.

14220. Walter Dayton v. Julia B. Dayton. For divorce. Com. sol., Jos. Shillington; Defts. sol., E. M. Hewlett.

October 4.

14221. Wesley Harding, alleged lunatic. Upon petition of Commissioners D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazleton.

14222. Matilda Smith, alleged lunatic. Upon petition of Commissioners D. C. De lunatico inquirendo. Com. sol., George C. Hazleton.

14223. W. A. Peck, alleged lunatic. Upon petition of Commissioners D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazleton.

14224. Carmelina Bacigalupo et al v. Ada C. Whitten and Caesare Castignetti et al. For partition by sale. Com. sol., R. Ross Perry.

14225. Arno Leonhardt v. The Gedney & Roberts Co. et al. For injunction and receiver.

14226. Edgar F. Thompson v. Grace M. Thompson. For divorce. Com. sols., Ralston & Siddons.

14227. Mary E. Walker, alleged lunatic. Upon petition of B. L. Walker. Com. sol., F. H. Mackey.

October 5.

14228. Jno. F. McIntosh v. James F. Brown et al. Injunction. Com. sol., J. H. Smith.

14229. Maria Jane Carter v. Jere Carter. For divorce. Com. sols., T. E. Jones & C. E. Cassard. Defts. sol., S. E. Darby.

14230. C. Neilson v. Bessie Phillips et al. For release. Com. sol., J. Walter Cooksey.

14231. Daniel B. McCauley v. The Union Credit Co. (Washington Branch). Creditor's bill and receiver. Com. sol., A. A. Birney.

14232. Arno Leonhardt v. The Gedney & Roberts Co. et al. For injunction. Com. sols., C. C. Tucker and W. C. Clephane.

October 6.

14233. Thos. J. Holmes v. Mary J. Brady et al. To enforce mechanic's lien. Com. sol., T. M. Fields.

14234. Michael Scanlon, alleged lunatic. Upon petition of Commissioners, D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazleton.

14235. J. R. Walter v. Eleanor A. Walter et al. Creditor's bill. Com. sols., Clark & Johnson.

October 7.

14236. Frank Schwarz v. Amy F. Schwarz. For divorce. Com. sol., R. Ross Perry.

14237. Jno. E. Connor v. Julia E. Connor. For divorce. Com. sol., C. Carrington.

14238. Mary Alice Hardbarger v. R. C. Hardbarger. For divorce. Com. sol., C. Carrington.

14239. P. A. Tracey v. Sarah J. Taylor et al. To recover on lost note. Com. sol., W. A. McKenney.

October 10.

14240. Jos. Paul v. Jno. W. Douglass et al. For injunction. Com. sol., A. S. Worthington.

October 11.

14241. Jno. Sibly, alleged lunatic. Upon petition of Commissioners, D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazleton.

Legal Notices.

Rule of Court.

RULE 20. * * * * Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

FIRST INSERTION.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of ANANIAS HERBERT, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of October, 1892.

her
FANNIE F. M. HERBERT,
mark

41 A. B. Duvall, Proctor. No. 319 A St. n. e., city.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of THOMAS F. RUSSELL, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8d day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 3d day of October, 1892.

PATRICK O'FARRELL,
41 1425 N. Y. Ave., Washington, D. C.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, letters testamentary on the personal estate of COLUMBUS GREENE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day of October, 1892.

SAMUEL H. GREENE,
41 J. J. Darlington, Proctor. 1320 Q St. n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of MAGDALENA LIPPERT, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of October, 1892.

FRANCIS MILLER,
41 M. A. Mess, Proctor. 1025 7th St. n. w.

This is to Give Notice

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of ELIZABETH J. STONE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 7th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 7th day of October, 1892.

WILLIAM E. EDMONSTON,
T. E. WAGGAMAN.

41 Wm. E. Edmonston, Proctor.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 7th day of October, 1892.

James Gillies, Executor, Complainant,

v.

Eq. 14,141. Doc. 34.

Fannie Gillies et al., Defendants.

On motion of the plaintiff, by Mr. Randall Hagner, his solicitor, it is ordered that the defendants, Matilda M. Raymond, Fannie Raymond, Sallie L. Gillies, Sarah Leigh Carow, L. Sheldon Carow and William Irving Gillies, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to construe the will of Rebecca S. Gillies, late of the District of Columbia, deceased, and to finally settle the estate and distribute the same.

By the Court: A. C. BRADLEY, Justice, &c.
41 True copy. Test: J. R. Young, Clerk, &c.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 10th day of October, 1892.

Clara A. Philipsen v. No. 14,154. Docket 34.

Carl G. S. Philipsen.

On motion of the plaintiff, by Mr. W. Preston Williamson, her solicitor, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for an absolute divorce on the grounds of desertion, drunkenness and cruelty.

By the Court: A. C. BRADLEY, Justice, &c.
41 True copy. Test: J. R. Young, Clerk, &c.
[Filed October 10, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 10th day of October, 1892.

William A. H. Turner v. No. 14,155. Docket 34.

Lillie Turner.

On motion of the plaintiff, by Mr. George W. Rea, his solicitor, it is ordered that the defendant cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is divorce a vinculo matrimonii, on the ground of desertion.

By the Court: A. C. BRADLEY, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
41 By L. P. Williams, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

Holding a Special Term for Orphans' Court Business.

This 11th of October, 1892.

In re estate of GARDNER K. ANDREWS, late of Washington County, District of Columbia. No 5221. Ad. D. 18.

Application having been made for the probate of a paper-writing propounded at the last will and testament, and for letters testamentary on the estate of said Gardner K. Andrews, deceased, by Alice R. Andrews.

Notice is hereby given to all concerned to appear in this court on Friday, Nov. 4th, 1892, at 1 o'clock p. m., to show cause, if any exist, against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter once in each of three successive weeks before said day.

By the Court: A. C. BRADLEY, Justice.
A true copy. Teste. L. P. WRIGHT, Reg. of Wills, D. C.
41 J. Carter Marbury, Proctor for applicant.

This is to Give Notice

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court Business, letters testamentary on the personal estate of EUNICE A. CANFIELD, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 10th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 10th day of October, 1892.

C. A. PRENTISS.
D. WEBSTER PRENTISS.
No. 986 9th St. n. w.

41

Legal Notices

SECOND INSERTION.

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of EMILY C. BRENT, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 5th day of October, 1892.

W. B. CHILTON,
225 Delaware Ave. n. e.,
J. J. Darlington, Proctor. Washington, D. C.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

the 5th day of October, 1892.

John C. Heald v. No. 14,168. Equity. Docket 34.

T. Owen Berry et al. On motion of the plaintiff, by Mr. A. S. Worthington, his solicitor, it is ordered that the defendants, T. Owen Berry, Fannie W. Berry, Samuel H. Berry and Anna R. Berry, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to have vested in the complainant all the right, title and interest of the defendants in and to that part of a tract of land known as Oxon Hill, which is in the District of Columbia—said part containing about 16.55 acres and lying between the Potomac River and the southwestern end of the southeastern boundary of said District.

By the Court: A. C. BRADLEY, Justice, &c.
A true copy. Test: J. R. Young, Clerk, &c.

40 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Building.

October 1st, 1892.

In the case of REESE H. VOORHEES, administrator d. b. n. of John Cox, late of Portsmouth, Va., deceased, the administrator d. b. n. aforesaid has, with the approval of the court, appointed Friday, the 4th day of November, A. D. 1892, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the administrator d. b. n. will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Washington Post previous to the said day.

L. P. WRIGHT,
Register of Wills for the District of Columbia.
40 No. 4612. Ad. D. 17. S. P. Knut, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

the 30th day of September, 1892.

Oliveretta C. Wharton et al. v. In Equity. No. 13,859.

Ella V. Chaplin et al. It appearing that Jos. K. McCammon, trustee, has reported to this Court the sale of lots numbers two and three, in square south of square seven hundred and forty four, made, pursuant to the decree entered herein, on the 7th day of July, 1892, and in accordance with the terms of the offer, approved by the order entered herein on the 29th day of September, 1892, and that the said trustee has received the whole amount of the purchase money.

It is adjudged, ordered and decreed, that the said sale stand ratified and confirmed, unless cause to the contrary be shown on or before the 31st day of October, 1892.

Provided, however, that a copy of this order be published in the Washington Law Reporter, once a week, for three successive weeks, prior to the date last aforesaid.

A. C. BRADLEY, Associate Justice
of the Supreme Court of the District of Columbia.
A true copy. Test: J. R. Young, Clerk.
40 By L. P. Williams, Asst. Clerk.

Legal Notices.**This is to Give Notice**

That the subscriber, of District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of MARY C. LEE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of Sept. next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of Sept., 1892.

JANE E. STRATTON, Executrix.

40 Wm. F. S. Curtis, Proctor.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of FREDERIC S. NICHOLS, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of Sept. next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of Sept., 1892.

FREDERIC B. NICHOLS,

40 Lorenzo A. Bailey, Proctor. 428 7th St., n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of ELIZABETH BROWNE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of Sept. next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of Sept., 1892.

HUGH M. BROWNE,

No. 5170. Admn. Doc. 18. 1416 I St., n. w.

40 James G. Berret, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

This 30th of September, 1892.

In re estate of HAMILTON J. WILLIAMS, dec'd, late of the District of Columbia. No. 4632. Admn. Doc. 17.

Application having been made for the probate of a paper-writing propounded at the last will and testament and for letters testamentary on the estate of said Hamilton J. Williams, deceased, by Phoebe Ann Williams, widow.

Notice is hereby given to all concerned to appear in this court on Friday October 28th, 1892, at twelve o'clock m., to show cause, if any exist, against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter once in each of three successive weeks before said day.

By the Court.

W. S. COX, Justice.

A true copy. Test: L. P. WRIGHT, Reg. of Wills, D. C.
40 J. H. Adriaans, Proctor for applicant.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphan's Court Business.

October 1, 1892.

In the case of J. Holdsworth Gordon, administrator of E. TUCKER BLAKE, deceased, the administrator aforesaid has, with the approval of the court, appointed Friday, the 28th day of October, A. D. 1892, at 12 o'clock m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive share (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the administrator will take the benefit of the law against them.

Provided, a copy of this order be published once a week for three weeks in the "Washington Law Reporter" previous to the said day.

Test:

L. P. WRIGHT,

Register of Wills for the District of Columbia.
40 No. 4215. Ad. D. 16.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

Margaret E. Cissel } v.
Rene Rosen. } In Equity. No. 12,542.

William H. Saunders, the trustee in this cause, having reported the sale of the real estate herein decreed to be sold to Margaret E. Cissel, for \$8,000, cash; it is this 30th day of September, 1892, ordered and adjudged that said sale be ratified and confirmed, unless cause to the contrary be shown before the 30th day of October, 1892.

Provided, a copy of this order shall be published in The Washington Law Reporter, in the three successive issues thereof published next after the date of this order.

A. C. BRADLEY, Justice,
A true copy. Test: J. R. Young, Clerk.
40 By W. P. Williams, Asst. Clerk.
[Filed September 30th, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

This 30th day of September, 1892.

In re estate of JAMES ROCHE, deceased, late of Washington, D. C. No. 5087. Admn. Doc. 18.

Application having been made for the probate of a paper-writing propounded at the last will and testament and codicil, and for letters testamentary on the estate of said JAMES ROCHE, deceased, by William V. Marmon.

Notice is hereby given to all concerned to appear in this court on Friday, October 27, 1892, at 12 o'clock, m., to show cause if any exist against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter, once a week in each of three successive weeks before said day.

By the Court. W. S. COX, Justice.
A true copy. Teste: L. P. WRIGHT.
40 Register of Wills, D. C.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Bridget Sheehan } v.
Timothy Sheehan. } Equity. No. 14,039.

On motion of the petitioner, by M. J. Colbert, her solicitor, it is, this 3d day of October, 1892, ordered that the defendant, TIMOTHY SHEEHAN, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise this cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce from the bond of matrimony on the ground of desertion for the full and uninterrupted period of two years and upwards.

A. C. BRADLEY, Justice.
A true copy. Test: J. R. Young, Clerk.
40 By M. A. Clancy, Asst. Clerk.
[Filed October 3, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 4th day of October, 1892.

Clara R. Gage } v.
Edward J. Gage. } No. 14,119. Docket 34.

On motion of the plaintiff, by Mr. W. T. Johnson, her solicitor, it is ordered that the defendant, EDWARD J. GAGE, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is divorce on the ground of willful desertion for the period of two years.

By the Court. A. C. BRADLEY, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
40 By L. P. Williams, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

This 30th of September, 1892.

In re Estate of CHARLES SMITH, late of the District of Columbia. No. 5189. Ad. D. 18.

Application having been made for letters of administration on the estate of said Charles Smith, deceased, by Thomas R. Nalley, a creditor.

Notice is hereby given to all concerned to appear in this court on Friday, October 28, 1892, at 12 o'clock, m., to show cause if any exist against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter once in each of three successive weeks before said day.

By the Court.

W. S. COX, Justice.
L. P. WRIGHT.
Register of Wills, D. C.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia has obtained from the Supreme Court of the District of Columbia holding a special term for Orphans' Court business, letters of administration on the personal estate of GUISEPPE CORTI, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day of October, 1892.

J. HOLDSWORTH GORDON.

40 Gordon & Gordon, Proctors.

THIRD INSERTION.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,**

Holding a Special Term for Orphans' Court Business.

This 23d day of September, 1892.

In re estate of EMILY W. FARQUHAR, late of the District of Columbia, No. 4912. Administration Doc. 17.

Application having been made for the probate of a paper-writing propounded as the last will and testament and for letters of Administration with will annexed on the estate of said Emily W. Farquhar, deceased, by Sophie S. Kreidler and Edward A. Kreidler.

Notice is hereby given to all concerned to appear in this Court on Friday Oct. 21, 1892 at one o'clock p.m., to show cause if any exist against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter once in each of three successive weeks before said day.

By the Court.

W. S. COX, Justice.

A true copy. Teste: L. P. Wright, Reg. of Wills, D. C.
39 C. M. & H. S. Matthews, Proctors for applicant.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

Holding a Special Term for Orphans' Court Business.

This 28th of September, 1892.

In re estate of HENRY HALL, late of the District of Columbia, No. 5192. Administration, Doc. 18.

Application having been made for the probate of a paper-writing propounded as the last will and testament, and for letters testamentary on the estate of said Henry Hall, deceased, by Mrs. Sarah Hall, the widow.

Notice is hereby given to all concerned to appear in this Court on Friday October 28th, 1892 at 11 o'clock a.m., to show cause if any exist against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter and Evening Star, once in each of three successive weeks before said day.

By the Court:

A. C. BRADLEY, Justice.

A true copy. Teste: L. P. Wright, Reg. of Wills, D. C.
39 Carusi & Miller, Proctors for applicant.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Mary M. King et al. } vs. In Equity. No. 13,884.

Maria L. Donaldson et al. }

Edwin Forrest and Anson S. Taylor, trustees, having reported that on the 24th day of May, 1892, they sold to James McK. Eiler, part of lot one in square twenty-four, (24) for forty-three hundred (4300) dollars, and on the 25th day of May, A. D. 1892, to William W. Hough, part of lot one in square fifty-four, for thirty-five hundred and seventy-five (3575) dollars; and to William C. Hauptman, the north fourteen (14) feet of lot twelve (12) in square seventy-seven (77) for twenty-four hundred (2400) dollars, all of said lots being in the City of Washington, District of Columbia. It is this 26th day of September, A. D. 1892, ordered that said sales will be finally ratified and confirmed on the 29th day of October, A. D. 1892, unless cause to the contrary be shown on or before said last mentioned day.

Provided a copy of this order be inserted in each of the three successive issues of the Washington Law Reporter published next after the date of this order.

W. S. COX, Justice.

True Copy. Test: J. R. Young, Clerk, &c.
39 By M. A. Clancy, Asst. Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
John Walker and Amanda, his wife, Margaret Kent and Lewis Kent, Complainants.

vs.

Etta Walker, William Otis Walker, (infant) Richard R. Jackson Guardian of Ida Walker, Lizzie Walker, and Reed Walker, (infants.) and said Ida, Lizzie and Reed Walker, Defendants.

Equity. No. 12,323. Doc. 30.

Application having been made by complainants in the above-entitled cause by R. B. Lewis, their solicitor for leave to file a supplemental bill, and it appearing that the defendants Etta Walker, William Otis Walker, Richard R. Jackson, guardian of Ida Walker, Lizzie Walker and Reed Walker, and the said Ida, Lizzie and Reed Walker are non-residents of the District of Columbia, it is this 24th day of September, 1892, ordered that the said defendants appear here within ten days after due publication of this order under the 20th rule of this Court and show cause if any they can, why such leave should not be granted. The object of the suit is for sale of lot 28 in square 100, and division of proceeds among those entitled.

39 W. S. COX, Justice.
A true copy. Test: J. R. Young, Clerk.
By M. A. Clancy, Asst. Clerk.

[Filed September 24, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Katherine Reidy, v. In Equity. No. 13,183.

Wm. Keough et al.

Charles A. Elliot and Edwin Forrest, trustees, heretofore appointed by the decree passed in this cause, to make sale of the real estate in the proceedings described, having reported to the court that they had made sale of said real estate, to wit; all that piece or parcel of land situated in the city of Washington, District of Columbia, and designated on the public plat or plan of said city as part of lot No. 28, in square 725 beginning for the same on the line of 2nd St. east at a point distant south from the northeast corner of said lot 18 ft. 8 inches; running thence west to the rear line of said lot 115 feet; thence south 18 feet 8 inches; thence east 115 feet; thence north with the line of 2nd St. east 18 feet 8 inches, to the place of beginning, to Henry Babe, at and for the sum of \$2700, it is this 23d day of September 1892 by the court ordered that the said sale be finally ratified and confirmed unless cause to the contrary be shown on or before the 29th day of October, 1892.

Provided that a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to said last mentioned date.

W. S. COX, Justice.
True copy. Test: J. R. Young, Clerk.
39 By M. A. Clancy, Asst. Clerk.
[Filed September 23, 1892. J. R. Young, Clerk.]

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of TIMOTHY COSTELLO, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of September, 1892.

her
ELLEN M. COSTELLO,
mark.
39 Albert Sillers, Proctor. No. 35 G St. n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration c. t. a. on the personal estate of HENRY D. BARR, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of September, 1892.

EMIL G. SOHAFFER,
424 11th St. n. w.
39 John Ridout, Proctor.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Hamilton Rothrock } In Equity. No. 14,117.**v.
Bessie Rothrock.

Upon motion of the complainant, by his counsel, A. A. Lipecomb, it is this 23d day of September, A. D. 1892, ordered that the defendant herein, BESSIE ROTHROCK, cause her appearance to be entered herein on or before the next rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

Provided a copy of this order be published in the Evening Star and the Washington Law Reporter, for the period of three successive weeks before said rule-day.

The object of this suit is to obtain a divorce, *a vinculo matrimonii*, from the defendant, Bessie Rothrock.

True copy. Test: J. R. Young, Clerk, &c.
By M. A. Clancy, Asst. Clerk.
[Filed September 23, 1892. J. R. Young, Clerk.]

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
The 12th day of May, 1892.**v.
Lillian E. Allen, } **Equity. No. 13,782. Docket 33.**

Johnson Allen. On motion of the plaintiff, by Mr. E. B. Hay, her solicitor, it is ordered that the defendant, JOHNSON ALLEN, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is divorce because of cruel treatment of the complainant by the defendant.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
By M. A. Clancy, Asst. Clerk

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
the 22d day of September, 1892.**v.
Lizzie T. Taylor } **No. 14,062. Equity Doc. 34.**

William J. Taylor. On motion of the plaintiff, by Mr. C. Carrington, her solicitor, it is ordered that the defendant, WILLIAM J. TAYLOR, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is divorce "a vinculo matrimonii" for willful and without cause desertion and abandonment for two years.

By the Court. W. S. COX, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
By M. A. Clancy, Asst. Clerk.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphan's Court business, letters of administration on the personal estate of SILAS C. CLARKE, late of the District of Columbia, deceased.

All persons having claims, against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of September, 1892.
FLORENCE M. CLARKE
89 Allan C. Clarke, Proctor. 501 Stanton Place.

**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
The 29th day of September, 1892.**

Catherine G. Lee, by William Cammack, her next friend,

vs.

Henry C. Lee.

No. 14,111. Eq. Docket 34.

On motion of the plaintiff, by Mr. Edmund Burke, her solicitor, it is ordered that the defendant, HENRY C. LEE, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce *a vinculo matrimonii* by the plaintiff from the defendant, and that the plaintiff be restored to her maiden name of Catherine G. Hobey, on the ground of two years' abandonment and desertion by the defendant of the plaintiff. It is further ordered that this order shall be published in the Washington Law Reporter and in the Evening Star newspaper once a week for three successive weeks.

By the court. A. C. BRADLEY, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
By M. A. Clancy, Asst. Clerk.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business.**

September, 29th, 1892.

In the case of John B. Hollingshead, administrator of FRANCIS I. HOLLINGSHEAD, deceased, the administrator aforesaid has, with the approval of the court, appointed Friday, the 21st day of October, A. D. 1892, at 1 o'clock p. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the said administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: L. P. WRIGHT, Register of Wills for the District of Columbia.
89 No. 4518. Edwards & Barnard, Proctors.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of MARY A. M. DOWNMAN, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 22d day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of September, 1892.
CYNTHIA R. DOWNMAN,
Cr. Gordon & Gordon,

39 Gordon & Gordon, Proctors. Attys. at Law.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of MICHAEL RADY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 24th day of February, 1892.
BRIDGET RADY,
No. 18 Mass. Ave. u. e.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

Holding an Equity Court.

This 28th day of September, 1892.

Richard T. Bell } v. No. 12,188. Equity Docket 30.

Allen F. Bell. Ordered that the sale made and reported by the trustee in the above cause to George R. Williams on the 29th day of August, 1892, and assigned to Ammon Behrend, as in said report set forth, be ratified and confirmed unless cause to the contrary thereof be shown on or before the 28th day of October next.

Provided a copy of this order be inserted in the Washington Law Reporter, once in each of three successive weeks before the 28th day of October next.

True copy. Test: A. C. BRADLEY, Justice.
John R. Young, Clerk.
By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

Holding a Special Term for Orphans' Court Business.

This 23d of September, 1892.

In re estate of JOSEPHINE DIGMUELLER, dec'd, late of Washington, D. C. No. 5187. Administration Doc. 18.

Application having been made for the probate of a paper-writing propounded as the last will and testament, and for letters of administration c. t. a. on the estate of said Josephine Digmueler, deceased, by Michael A. Mess.

Notice is hereby given to all concerned to appear in this court on October 21st, 1892, at 1 o'clock p. m., to show cause if any exist against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter, once in each of three successive weeks before said day.

By the Court: W. S. COX, Justice.
A true copy. Teste: L. P. WRIGHT, Reg. of Wills, D. C.
39 M. A. Mess, Proctor for applicant.

The Washington Law Reporter.

ESTABLISHED 1874.

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[WEEKLY]

No. 42

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WASHINGTON, D. C., - - - OCTOBER 20, 1892

Acts and Joint Resolutions of the 52d Congress, relating to District of Columbia matters, continued in Nos. 22, 23, 32, 33, 34, 35, 37, 38, 42, of Vol. XX of The Law Reporter.

An act for the preservation of the public peace and the protection of property within the District of Columbia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall not be lawful for any person or persons to destroy, injure, disfigure, cut, chip, break, deface, or cover, or rub with or otherwise place filth or excrement of any kind upon any property, public or private, in the District of Columbia, or any public or private building, statue, monument, office, dwelling, or structure of any kind, or which may be in course of erection, or the doors, windows, steps, railing, fencing, balconies, balustrades, stairs, porches, or halls, or the walls or sides, or the walls of any inclosure thereof; or to write, mark, or paint obscene or indecent words or language thereon, or to draw, paint, mark, or write obscene or indecent figures representing obscene or indecent objects; or to write, mark, draw, or paint any other word, sign, or figure thereon, without the consent of the owner or proprietor thereof, or, in case of public property, of the person having charge, custody, or control thereof, under a penalty of not more than fifty dollars for each and every such offense.

SEC. 2. That it shall not be lawful for any person or persons to destroy, break, cut, disfigure, deface, burn, or otherwise injure any building materials, or materials intended for the improvement of any street, avenue, alley, foot pavement, roads, highways, or inclosure, whether public or private property, or remove the same (except in pursuance of law or by consent of the owner) from the place where the same may be collected for purposes of building or improvement as aforesaid; or to remove, cut, destroy, or injure any scaffolding, ladder, or other thing used in or about such building or improvement, under a penalty of not more than

twenty-five dollars for each and every such offense.

SEC. 3. That it shall not be lawful for any person or persons within the District of Columbia to throw any stone or other missile in any street, avenue, alley, road, or highway, or open space, or public square, or inclosure, or to throw any stone or other missile from any place into any street, avenue, road, or highway, alley, open space, public square, or inclosure, under a penalty of not more than five dollars for every such offense.

SEC. 4. That it shall not be lawful for any person or persons to set up or fly any kite, or set up or fly any fire balloon or parachute in or upon or over any street, avenue, alley, open space, public inclosure, or square within the limits of the cities of Washington or Georgetown, under a penalty of not more than ten dollars for each and every such offense.

SEC. 5. That it shall not be lawful for any person or persons to curse, swear, or make use of any profane language or any indecent or obscene words, or engage in any disorderly conduct in any street, avenue, public space, square, road, or highway, or at any railroad depot or steamboat landing within the District of Columbia, or in any place wherefrom the same may be heard in any such street, avenue, alley, public square, road, highway, or in any such depot, railroad cars, or on board any steamboat, under a penalty of not exceeding twenty dollars for each and every such offense.

SEC. 6. That it shall not be lawful for any person or persons within the District of Columbia to congregate and assemble at the corners of any of the streets or avenues, or in any street, avenue, or alley, road, or highway, or on the foot pavements or flag footways of any street or avenue, or at the entrance or on the steps, cellar doors, porches, or porticos of any public or private building or office, or at the entrance of any public or private building or office, or at the entrance, or in, on, or around any of the inclosures of the Capitol, Executive Mansion, public squares, District buildings, Judiciary square, or at the entrance of any church, schoolhouse, theater, or any assembly room, or in or around the same, or any other public or private inclosure within the said District, and be engaged in loud or boisterous talking, or to insult or make rude or obscene comments or remarks or observations on persons passing by the same, or in their hearing, or to so crowd, obstruct, or incommodate the said foot pavement or flag footway, or the entrance into or out of any such church, public or private dwelling, city hall, Executive Mansion, Capitol, or such public inclosure, square or alley, highway or road, as to prevent the free and uninterrupted passage thereof, under a penalty of not more than twenty-five dollars for each and every such offense.

SEC. 7. That it shall not be lawful for any prostitute or lewd woman to invite, entice, persuade, or to address for the purpose of inviting, enticing, or persuading any person or persons, in or upon any avenue, street, road, highway, open space, alley, public square, or inclosure in the District of Columbia, to accompany, go with, or follow her to her residence, or to any

other house or building, inclosure, or other place, for the purpose of prostitution, under a penalty, if the person so invited, enticed, or persuaded, or addressed for the purpose of inviting, enticing, or persuading shall be an adult, of not more than twenty-five dollars for each and every such offense, and if the person invited, enticed, or persuaded, or addressed for the purpose of inviting, enticing, or persuading be a minor, under a penalty of no more than fifty dollars for each and every such offense. And it shall not be lawful for any prostitute or woman of lewd character to invite, entice, or persuade, or address for the purpose of inviting, enticing, or persuading any person or persons from any door, window, porch, or portico of any house or building to enter any house, or go with, accompany, or follow her to any place whatever, for the purpose of prostitution, under the like penalties herein provided for the same disorderly conduct in the streets, avenues, roads, highways, or alleys, public squares, open places or inclosures.

SEC. 8. That all vagrants, idle and disorderly persons, persons of evil life and fame, persons who have no visible means of support, persons who are likely to become chargeable to the District of Columbia as paupers, or drunk in or about any of the streets, avenues, alleys, roads, or highways, or public places within the District of Columbia, or loitering in or about tippling houses, all suspicious persons who have no fixed place of residence or can not give a good account of themselves, persons guilty of open profanity or grossly indecent language in or on any of the streets, avenues, alleys, public places, roads, or highways of said District; all public prostitutes, and all such persons who lead a notoriously lewd or lascivious course of life, shall, upon conviction thereof before the police court of said District, be required to enter into security for their good behavior for the space of six calendar months. Said security shall be in the nature of a recognizance to the District of Columbia, to be approved by said court in a penalty not exceeding two hundred dollars, conditioned that the offender shall not, for the space of six months, repeat the offense with which he is charged, and shall in other respects conduct himself properly.

SEC. 9. That it shall not be lawful for any person or persons to make any obscene or indecent exposure of his or her person or their persons in any street, avenue, or alley, road, or highway, open space, public square, or inclosure in the District of Columbia, or to make any such obscene or indecent exposure of person in any dwelling or other building or other place wherfrom the same may be seen in any street, avenue, alley, road, or highway, open space, public square, or inclosure, under a penalty not exceeding two hundred and fifty dollars for each and every such offense.

SEC. 10. That it shall not be lawful for any person or persons to entice, induce, urge, or cause any dogs to engage in a fight in any street, alley, road, or highway, open space, or public square in the District of Columbia, or to urge, entice, or cause such dogs to continue or prolong such fight, under a penalty of not more than five dollars for each and every offense;

and any person or persons who shall induce or cause any animal of the dog kind to run after, bark at, frighten, or bite any person, horse, or horses, cows, cattle of any kind, or other animals lawfully passing along or standing in or on any street, avenue, road, or highway, or alley in the District of Columbia, shall forfeit and pay for every such offense a sum not exceeding five dollars.

SEC. 11. That it shall not be lawful for any person or persons to molest or disturb any congregation engaged in any religious exercise or proceedings in any church or place of worship in the District of Columbia; and it shall be lawful for any of the authorities of said churches to arrest or cause to be arrested any person or persons so offending, and take him, her, or them to the nearest police station, to be there held for trial; and any person or persons violating the provisions of this section shall forfeit and pay a fine of not more than one hundred dollars for every such offense.

SEC. 12. That it shall not be lawful for any person or persons to ride or drive any animal of the horse kind in or on any street, avenue, or alley of the cities of Washington or Georgetown at a rate of speed exceeding eight miles per hour, nor cause any such animal to turn any corner within the said cities at a rate of speed exceeding four miles per hour, nor to ride or drive any such animal in or on any road or highway in that part of the District of Columbia lying outside of said cities at a rate of speed exceeding twelve miles per hour. Any person violating any of the provisions of this act shall forfeit and pay a fine or penalty of not more than twenty-five dollars for each and every such offense.

SEC. 13. That it shall not be lawful for any person or persons to girdle, break, wound, destroy, or in any manner injure any of the trees now growing or planted and set, or which may hereafter be planted and set on any of the public grounds, open spaces, or squares or on any private lot, or on any of the streets, or avenues, roads or highways, in the District of Columbia, or any of the boxes, stakes, or any other protection thereof, under a penalty of not exceeding fifty dollars for each and every such offense; and if any person or persons shall tie or in any manner fasten a horse or horses to any of the trees, boxes, or other protection thereof on any streets or avenues, roads or highways, on any of the public grounds belonging to the United States, or on any of the streets, avenues, or alleys, in the District of Columbia, each and every such offender shall forfeit and pay for each offense a sum not exceeding ten dollars.

SEC. 14. That it shall not be lawful for any person or persons within the limits of the District of Columbia to kindle or set on fire, or be present, aiding, consenting, or causing it to be done, in any street, avenue, road, or highway, alley, open ground, or lot, any box, barrel, straw, shavings, or other combustible, between the setting and rising of the sun; and, any person offending against the provisions of this act shall on conviction thereof, forfeit and pay a sum not exceeding ten dollars for each and every offense.

SEC. 15. That the provisions of the several

laws and regulations within the District of Columbia for the protection of public or private property and the preservation of peace and order be, and the same are hereby, extended to all public buildings and public grounds belonging to the United States within the District of Columbia. And any person guilty of disorderly and unlawful conduct in or about the same, or who shall willfully injure the buildings or shrubs, or shall pull down, impair, or otherwise injure any fence, wall, or other inclosure, or shall injure any sink, culvert, pipe, hydrant, cistern, lamp, or bridge, or shall remove any stone, gravel, sand, or other property of the United States, or any other part of the public grounds or lots belonging to the United States in the District of Columbia, shall, upon conviction thereof, be fined not more than fifty dollars.

SEC. 16. That if any person shall drive or lead any horse, mule, or other animal, or any cart, wagon, or other carriage whatever on any of the paved or graveled footways now made or which may hereafter be made in and on any of the aforesaid public grounds, or shall ride thereon, except at the intersection of streets, alleys, and avenues, each and every such offender shall forfeit and pay for each offense a sum not less than one nor more than five dollars.

SEC. 17. That it shall not be lawful for any person or persons to play the game of football, or any other game with a ball, in any of the streets, avenues, or alleys in the cities of Washington and Georgetown; nor shall it be lawful for any person or persons to play the game of bandy, shindy, or any other game by which a ball, stone, or other substance is struck or propelled by any stick, cane, or other substance in any street, avenue, or alley in the cities of Washington and Georgetown, under a penalty of not more than five dollars for each and every such offense.

SEC. 18. That all prosecutions for violations of any of the provisions of any of the laws or ordinances provided for by this act shall be conducted in the name of and for the benefit of the District of Columbia, and in the same manner as now provided by law for the prosecution of offenses against the laws and ordinances of the said District. Any person convicted of any violation of any of the provisions of this act, and who shall fail to pay the fine or penalty imposed, or to give security where the same is required, shall be committed to the workhouse in the District of Columbia for a term not exceeding six months for each and every offense.

SEC. 19. That all laws or ordinances, or parts of laws or ordinances, now in force in the District of Columbia inconsistent with the provisions of this act, or any part thereof, are hereby repealed.

Approved, July 29, 1892.

THE UBIQUITOUS ANNIE.—Little Annie Rooney, of Lusk, aged twenty-five, is reported by the Irish Law Times to have got £100 damages recently from George M. Guirk, aged seventy, for breach of promise of marriage.

Death of Linden Kent.

ACTION OF THE DISTRICT BAR.

The Bar of the Supreme Court of the District of Columbia have assembled to pay a tribute to the memory of Linden Kent, whose sudden and untimely death has profoundly shocked and grieved the community. In the prime of life, in the full though still rising tide of professional success, our brother has been taken from our midst. The court has lost an accomplished, a conscientious and an able assistant in its labors, and the Bar one of its very brightest ornaments; while Bench and Bar alike feel a deep sense of personal grief and loss.

Of spotless integrity, well equipped by talents and education to excel, his manner and conversation attracted all who met him. Gifted with a quick and broad intelligence, he had yet other qualities which forced him far ahead of most of his fellows. These same qualities which charmed in daily intercourse, in graver garb commanded the respectful attention of the court and claimed the sympathetic interest of the jury. The pleasing voice and consummate tact which won him many cases, won him many hearts. In court, his gift of eloquence seemed to impose dignity and modesty on his lightest word, and quick and forceful as his thrusts always were, his knightly courtesy in the fair field of our profession lends gentleness to our memory of his hardest fight and sheds peculiar lustre on all his victories.

In token of our admiration and affection for our deceased brother, be it resolved—

- (1) That the Bar attend his funeral in a body.
- (2) That a copy of the foregoing and these resolutions be presented to the Court in General Term by the District Attorney, with the request that they be spread upon the minutes of the court.
- (3) That the secretary of this meeting transmit a like copy to the widow of our deceased brother, with the respectful assurance of our profound sympathy.

Read to the court Oct. 17, 1892. The Chief Justice responded according to the spirit of the resolutions, and the court ordered that the resolutions be spread upon the minutes of the court.

Supreme Court of the United States.

William McPherson, Jr., et al., relators and plaintiffs in error, v. Robert R. Blacker, Secretary of State of the State of Michigan.

In error to the Supreme Court of the State of Michigan.

This case was advanced *instanter*, and argued on Tuesday, October 11, 1892.

The case was brought to the Michigan court for the purpose of testing the validity of an Act of the Legislature of Michigan, approved May 1st, 1891, whereby the Legislature assumed to repeal former laws which required that electors of President and Vice President of the United States should be chosen by vote of the entire State; and instead thereof enacted that two electors at large should be chosen, one from each of two districts named in the act "Eastern District" and "Western District." The act also provided that one elector for each of the twelve Congressional Districts of the State should be chosen by the vote only of the district which such elector should represent.

The Supreme Court of Michigan sustained the validity of the Act. And on October 17th, 1892, the Supreme Court of the United States *affirmed* the judgment of the Michigan court.

A COLORED AGNOSTIC.—A colored man arraigned on a charge of grand larceny, the Omaha Mercury says, answered, "Guess not," when asked if he was guilty, and in further answer to an inquiry whether he didn't know, said, "No, sir; Judge Hawes says I aint, date all I knows 'bout it." When the judge further said, "But you know whether you took the property or not, he answered again, "No, sir; Judge Hawes dun toles me I didn't and for me not to say nothin' to nobody 'bout it, dats all I knows." A plea of not guilty was entered.

A Partingtonian widow, when asked what share of her husband's property she would have, replied: "I get one third of his *personality* outright, and the use for life of the same share of his *reality*."

Supreme Court of the District of Columbia. IN GENERAL TERM.

IN RE THE ESTATE OF DAVID D. PORTER, DECEASED.

1. Within the meaning of the Statute of 29 Charles II, Ch. 3, attestation is properly made either when the witness has seen the testator sign the instrument, or has heard him, after it has been signed, acknowledge that the act was his.
2. This acknowledgment may be conveyed either by words or by acts which indicate to the witness that he is called upon to act in the capacity of a witness, and to attest something which is treated by the testator as his act.
3. It is not necessary to the effectiveness of this acknowledgment or of the attestation, that the witness should know the nature of the instrument produced and submitted for his attestation.
4. The testator laid before the witness Wilkes, a paper bearing his own signature and the word "witnesses." He thereby conveyed an acknowledgment that the instrument produced was his act, and along with this acknowledgment, a desire that the witness should be witness of that fact. This was a compliance with the Statute of 29 Charles II, Ch. 3.
5. The codicil in question was properly executed and attested as a will devising real property.

Orphans' Court. No. 4289. Decided April 5, 1892.
Chief Justice BINGHAM and Justices COX and JAMES sitting.

Messrs. W. B. and H. R. WEBB for propounder.

Messrs. W. D. DAVIDGE and W. D. DAVIDGE, Jr., for caveator.

Mr. Justice JAMES delivered the opinion of the Court.

The justice holding the special term for Orphans' Court business has certified to this court the question whether a certain paper writing, purporting to be a codicil to the will of the late Admiral Porter, should be admitted as a will disposing of real estate. The particular question is, whether that paper was attested by William Wilkes, one of the three persons whose names were subscribed as witnesses.

The proceedings in the Orphans' Court, relating to proof of the will and codicil were as follows: Mrs. Edna Campbell, mentioned in those papers as Edna Porter, appeared by her solicitor and demanded full proof of their execution. Thereupon J. M. Alden, Chauncey Thomas and William Wilkes, who were offered as witnesses to the will, testified that, at or about the date thereof, they saw Admiral Porter sign and heard him acknowledge it as his last will and testament, and that thereupon, at his request, they subscribed their names as witnesses. As to the paper purporting to be a codicil, Alden and Thomas testified that, at or about the date thereof, they saw Admiral Porter sign it, and that thereupon, at his request, they signed their names to it as witnesses, and that, when that

paper was so signed, Wilkes, whose name appears as one of the witnesses, was not present. Wilkes testified that he was employed as a servant in the testator's house, that he was summoned by the bell to the room in which the admiral transacted business, that when he entered it, and during his stay, the admiral and J. M. Alden, and no other persons, were there; that, on his entrance, Admiral Porter pointed to a paper on the table and said: "sign that paper;" that thereupon, witness signed the paper pointed out to him and left the room; that the paper shown to him in court was the paper signed by him; that the signature, "William Wilkes, messenger," appearing thereon, was his handwriting; that, at the time of his signature, there was no acknowledgment of the nature of the paper, or of the signature of Admiral Porter, and that witness could not say whether such signature was then on the paper.

It was agreed in open court, by counsel for all of the parties, that the paper referred to had in fact been executed by Admiral Porter, and attested by the witnesses, J. M. Alden and Chauncey Thomas, before Wilkes signed it.

The statute of Maryland relating to wills, which is in force in this District, provides as follows:

"All devises and bequests of any lands or tenements, devisable by law, shall be in writing and signed by the party so devising the same, or by some other person in his presence and by his express direction, and shall be attested and subscribed, in the presence of the said testator, by three or more credible witnesses, or else they shall be utterly void and of none effect." Act of 1798, Ch. 101, subch. 1, Sec. 4.

What is it that this statute requires to be attested? Is it the fact that the testator signed the paper in question; or is it the two facts that he not only signed that paper but signed it as his will? In examining this question it is proper to refer as well to English as to American authorities, for the provision above cited was copied from section 5, of the statute of Charles II, Ch. 3, commonly known as the statute of frauds.

In Wyndham v. Chetwynd, 1 J. Burr, 414 (1757) Lord Mansfield said: "This whole clause, which introduces a positive solemnity to be observed, not by the learned only, but by the unlearned; at a time when they are supposed to be without legal advice; in a matter which greatly interests every proprietor of land; where the direction should be plain to the meanest capacity; is so loose that there is not a single branch of the solemnity defined or described with suffi-

cient accuracy to convey the same idea to the greatest capacity. There have been litigations and contradictory opinions, upon almost every part of the form; as, "What is signing by the testator? Whether the witnesses are to attest *uno contextu*, *uno eodemq tempore*? Whether they are to see the testator sign? Whether they ought to know that he signs it as his will? Whether he ought to publish it as his will? A very little precision and a very few words might have prevented all these questions. * * * It has been said that this act of 29 C. 2, ch. 3, was drawn by Ld. Ch. J. Hale. But this is scarce probable. It was not passed till after his death; and it was brought in in the common way, and not upon any reference to the judges." These observations, especially that this section prescribed solemnities which must be practised by the unlearned, when they are supposed to be without legal advice, are strong arguments that it is not to be construed technically, nor in ways which only the after thought of litigation would suggest.

Later, in the same case, Lord Mansfield said: "The legislature meant only to guard against fraud by a solemn attestation, which they thought would soon be universally known, and might very easily be complied with. * * * Suppose the subscribing witness honest; how little need they know? They do not know the contents; they need not be together; they need not see the testator sign; (if he acknowledge his hand it is sufficient); *they need not know it to be a will; if he delivers it as a deed it is sufficient.*"

Bond v. Seawell, 3 Burr, 1773, (A. D. 1765) was a case reserved at *nisi prius*, and the question was upon the due execution of the will of Sir Thomas Chitty. As to two of the witnesses, it was proved that the testator showed them the codicil and the last sheet of the will, (the latter being written by him on two separate sheets); that he then sealed before them both this last sheet of the will and the codicil, took up both of them and delivered them severally as *his act and deed for the purposes therein mentioned*. A new trial was ordered on account of a question whether the first sheet of the will was, or was not, in the room at the time of the attestation. Meantime Lord Mansfield said: "It is not necessary that the witnesses should attest in the presence of each other, or that the testator should declare the instrument he executed "to be his will," or that the witnesses should attest every page, folio, or sheet; or that they should know the contents; or that each folio, page or sheet should be particularly shown to them."

In conclusion he said: "if the jury shall be of opinion that it (the first leaf of the will) was then in the room, they ought to find for the will generally; and they ought to presume, from the circumstances proved, that the will was in the room."

It is proper to remark that, in disposing of this case, Lord Mansfield informed the bar that he had had a conference with all of the judges, except Mr. Baron Adams, who was out of town. Although they only suggested certain doubts, it is manifest that he had their concurrence in this view. This case is, therefore, of very weighty authority.

The case most commonly referred to by American courts is *White v. Trustees of British Museum*, 6 Bing., 309. We shall state it somewhat at length, because it has been the subject of conflicting interpretations. That case was heard on a special verdict, which found that the paper in question was in the handwriting of the testator; that two of the witnesses signed it without seeing his signature, and were not informed by him of the nature of the paper, or of the purpose for which they were requested to sign it; that at a later date a third witness signed the paper, and was at the same time informed by the testator that it was his will.

Tindal, C. J., said: "It has been held, in so many cases, that it must now be taken to be settled law, that it is unnecessary for the testator actually to sign the will in the presence of the three witnesses who subscribe the same; but that any acknowledgment before the witnesses that it is his signature or any declaration that it is his will, is equivalent to an actual signature in their presence, and makes the attestation and subscription of the witnesses complete. The objection, therefore, to the execution of the present will, does not rest upon the fact that it was signed by W. White in their presence; but that, with respect to two of the witnesses, there was no acknowledgment of his signature nor any declaration that it was his will; but that they signed their names in entire ignorance of the nature of the instrument, or of the object for which their names were written. * * *

"The question, however, appears to us to be: Whether, upon this special verdict, the finding of the jury establishes, although not an acknowledgment in words, yet an acknowledgment in fact, by the devisor to the subscribing witnesses, that the instrument was his will? for if by what the devisor has done, he must, in common understanding and reasonable construction, be taken to have acknowledged the instrument to be his will, we think the attesta-

tion of the will must be considered as complete. * * *

"In the execution of wills, as well as that of deeds, the maxim will hold good '*non quod dictum sed quod factum est, inspicitur.*' Now, in the first place, there is no doubt upon the identity of the instrument. The paper in question is the very paper writing which was produced by the testator to the three witnesses. * * * In the next place, it appears from the special verdict, that the devisor was conscious himself that the instrument was his will. For the verdict finds that he was of sound disposing mind, both at the time he signed it himself, and also at the time when the witnesses subscribed their names. But, further, it appears from the inspection of the instrument set out in the special verdict, the signature of the three names could not possibly enure to charge themselves, or any other person, and could not have been done for any other purpose whatever than simply to make them *witnesses* to the will. And lastly, it appears from the same inspection, that immediately above the names of the witnesses, there was written in the handwriting of the testator, these words: 'In the presence of us as witnesses thereto,' which do amount to a clear and unequivocal indication of the testator's intention that they should be *witnesses to his will*.

"When, therefore, we find the testator knew this instrument to be his will; that he produced it to the three persons and asked them to sign the same; that he intended them to sign it as witnesses; that they subscribed their names in his presence, and returned the same identical instrument to him, we think the testator did acknowledge in fact, though not in words, to the three witnesses that the will was his. For, whatever might have been the doubt upon the true construction of the statute, if the case were *res integra*, yet as the law is now fully settled, that the testator need not sign his name in the presence of the witnesses, but that a bare acknowledgment of his handwriting is a sufficient signature to make their attestation and subscription good within the statute, though such acknowledgment conveys no intimation whatever, or means of knowledge, either of the nature of the instrument, or the object of the signing; we think the facts of the present case place the testator and the witnesses in the same situation as they stood where such oral acknowledgment of signature has been made, and we do, therefore, upon the principle of these decisions, hold the execution of the will in question to be good within the statute."

We have said that this opinion has been the

subject of conflicting interpretations. It seems to have been understood by some courts to mean that the testator must, either in words or in effect, acknowledge, not only that the paper in question was his act, but that it was a *will*. Some expressions in it may, if considered separately, suggest such a meaning; for example, the following: "The question appears to us to be, whether, upon this special verdict, the finding of the jury establishes, although not an acknowledgment in words, yet an acknowledgment in fact, by the devisor to the subscribing witnesses, that the instrument was his *will*." But these words are not to be considered separately; they must be read with the context; and the concluding paragraph of the opinion was to the effect that an acknowledgment of what the testator knew to be his will was such an acknowledgment that it was his will as would satisfy the statute, although it gave no intimation to the witnesses of the nature of the instrument.

In Osborn v. Cook, 11 Cushing 532 (535) the Supreme Court of Massachusetts so interpreted White v. The Trustees. Thomas J., speaking for the court said; "In Ilott v. Genge, 3 Curteis, 118, Sir Herbert Jeanner Fust, referring to the case of White v. Trustees of British Museum, says: "This is a determination that where a testator had written a will himself and signed it, and produces that will so signed (for that is a point not to be lost sight of) to witnesses and desires them to sign their names, that amounts to an acknowledgment that the paper signed by them is *his will*, and the instrument is complete for its purpose; it is acknowledged by the testator to be his will." It would be more correct to say, the instrument is acknowledged to be his *act*, which, upon production, is found to be his *will*." It may be added that the doctrine of White v. The Trustees has been followed in Massachusetts. In Hogan v. Grosvenor, 10 Metc., 54 (56) Hubbard, J. said: "His acknowledgment that the instrument is *his*, with a request that they attest it, is sufficient." This was said in a case where one of the witnesses had testified that he did not know what the paper was when he signed it at the testator's request, and only surmised that it was a will. The court observed that "The tendency of the later cases, both in England and this country, has been to give the words of the statute their simple meaning, that signing by witnesses, in the testator's presence, to a paper acknowledged by him, in some satisfactory manner, to be *his*, is a sufficient compliance with the terms of the statute."

In relation to the point in question, the

statute of Connecticut is the same as the act of 29 Chas. II. The Supreme Court of that State said, in Canada's Appeal, 47 Conn., 450 (460): "The charge declares the law to be, that the signature of a testator to a will is not duly attested unless, at the time of attestation, the attesting witness knows that the instrument is a will. This attributes too much meaning to the word 'attestation'; more than has been given to it by courts which have been called upon to define it where used in similar statutes." For a true interpretation of that word, the court referred to Wyndham v. Chetwynd, *supra*, Wright v. Wright, 7 Bing., 457; White v. Trustees of British Museum, *supra*, and to Trimmer v. Jackson, 4 Burn's Eccl. Law, 102, 3d Ed.; and remarked that in the latter case 'the principle attained its *highest development*.' The attestation was there held sufficient 'although the devisor, not content with withholding the truth from the witnesses, concerning the contents or nature of the instrument executed, intentionally misled them by stating it to be a deed.'

The facts in Welty v. Welty, Exr., 8 Md., 15, did not raise the question whether the testator must acknowledge that the paper attested was a will, but we understand the reference of the court to the cases above cited to express approval.

This line of cases fully justifies the propriety of some general observations of Lord Mansfield in Wyndham v. Chetwynd. After stating that the legislature meant only to guard against fraud, and that, in his experience, "many more fair wills have been overturned for want of the form, than fraudulent have been prevented by introducing it," he said: "For these and many more reasons, it is clear that judges should lean against objections to the formality. They have always done so, in every construction upon the words of the statute; *a fortiori* ought they to do so if that system would spread a snare, in which many honest wills must be entangled, and be no preservative against fraud."

We accept as authoritative the line of cases which we have cited. They show that, within the meaning of the statute of 29 Charles II, attestation is properly made, either when the witness has seen the testator sign the instrument, or has heard him, after it has been signed, acknowledge that the act was his. They show also that this acknowledgment may be conveyed either by words or by acts which indicate to the witness that he is called upon to act in the capacity of witness, and to attest something which is treated by the testator as his act. They show,

too, that it is not necessary to the effectiveness of this acknowledgment or of the attestation, that the witness should know the nature of the instrument produced and submitted for his attestation. It is pointed out by Chief Justice Tindal, as a significant circumstance, that the paper laid before the witness in *White v.* The Trustees bore the testator's signature and the formula of attestation. The significance of this fact was, not that the witness was thereby enabled to know what kind of instrument he was to attest, but that such fact was consistent only with an intent, on the testator's part, to acknowledge to the witness what he had done.

All of the essential facts commented upon by Chief Justice Tindal in that case appear in the case before us. The testator laid before the witness Wilkes a paper bearing his own signature and the word "witnesses." This could have but one meaning. He thereby conveyed an acknowledgment that the instrument produced was his act, and along with this acknowledgment, a desire that the witness should be witness to that fact. We are of opinion that the transaction before us complied with every requirement stated in *White v.* The Trustees of the British Museum, and therefore was a compliance with the Statute of 29 Charles II, Ch. 3. We hold that the codicil in question was properly executed and attested as a will devising real property.

ALLOWED TO TAKE HIS CHOICE.—A Texas journal tells of a justice of the peace holding court on the border line between Texas and Arkansas, who said to a man charged with murder and horse stealing: "Do you want to be tried by the Arkansas law or the Texas law? If by the former, I'll set you free for stealing the horse, but hang you for killing the man. If by the Texas law, I'll acquit you for murdering the man, but hang you for stealing the horse."

JUDGES ALSO SHOULD "BE FAIR AND YET NOT FOND."—The saying of Steele defending Dryden's comparison of the Duchess of Clevelaud to Cato, that "there is no stretching a metaphor too far when a lady is in the case," was quoted in a Georgia case by a dissenting judge as the only justification of the decision, which was in favor of a woman's right of dower. He added: "For many years I have witnessed the quixotism which the Bench displays whenever a woman is a party or a woman's claims are involved. I fear that it is an incurable insanity, and thus far it has exhibited no obedience to law, and is deaf to reason and even insensible to ridicule."

Supreme Court of Pennsylvania.

CARSON v. FEDERAL STREET & PLEASANT VALLEY PASSENGER RWY. CO.

1. Upon the trial of a case for injuries to the team of the plaintiff by being struck while crossing the tracks of an electric railway by a car upon said tracks which ran at right angles to the street upon which the team was travelling, the judge instructed the jury, *inter alia*, that there was no rule of law that required the driver to "stop, look and listen," but it was for them to determine what it was the driver's duty to do, and whether he actually did it on this occasion. *Held*, error thus to leave the jury without any rule of law to apply and at liberty to make one to suit themselves.
2. A person about to cross a street upon which is located a street railway must exercise a reasonable amount of care to avoid contact with a moving car. It may not be necessary to stop on approaching such a crossing, but it is necessary to look before driving upon the track.

Decided January 25, 1892.

Appeal of the Federal Street & Pleasant Valley Passenger Railway Company, defendant, from the judgment of the Court of Common Pleas No. 2, of Allegheny County, in an action of trespass brought by Thomas Carson to recover for injuries done to the plaintiff's horses and wagon by reason of the alleged negligence of the defendant company.

The following facts appeared on the trial of the case before Ewing, P. J.: The plaintiff was engaged in grading Irwin avenue, in Allegheny City, and had teams of his own and others employed hauling the dirt and dumping it at some place where it was necessary to cross and re-cross Washington avenue and the tracks of defendant's road, in going and coming. He had a team and driver, Samuel Orr, at this work. On March 17, 1890, on the return of that team, crossing Washington avenue, the wagon was struck by a car of the defendant company, and was damaged and the horses were injured. The defendant's cars at this point were operated by electric motors, and the operator of the car usually rang a gong on approaching a street crossing. There was evidence that in this case the gong was not sounded.

Orr having testified that he listened for the gong, further testified as follows: "Q. After you listened and did not hear the bell, you did not think any more about it until you were struck? A. I didn't. I listened and didn't hear any bell and thought no car was coming, and drove straight across; I wanted to take the right hand of the street. Q. You did not stop your horses? A. I didn't stop them. They were walking very slow; going down I was listening for the bell. Q. You were driving, looking right in.

front and listening for the bell? A. Yes, sir. Q. And you were not looking either way, were you? A. Well, I was keeping an eye ahead of me. Q. But you were not looking up and you were not looking down, were you? You were looking ahead of you, were you? A. I am always looking ahead when driving a team. Q. You had been driving there several days, had you? A. Yes, sir; had been driving there all winter before that."

The defendant requested the court to charge the jury as follows:

1. The evidence does not authorize the conclusion that the defendant was guilty of negligence. *Refused.*

2. The evidence shows that in driving upon the track in front of the advancing car in the manner and under the circumstances as shown, the driver of the team was guilty of negligence, contributing to produce the accident of which complaint is made. *Refused.*

3. Under all the evidence and the law of this case, the verdict should be for the defendant. *Refused.*

The court charged the jury, *inter alia*, as follows:

"I did not mean to exclude from the jury in this case, the question as to whether or not the driver should not have stopped, looked and listened. I simply say it is not a fixed rule of law, but it is for the jury. If it were an ordinary steam railway crossing, I would have had to say to you, as a matter of law, it was negligence if he did not stop, as well as look and listen, no difference what I might have thought, or you might have thought about it. But in this case, that is not a rule of law. It is a question for you, under all the circumstances, as to what he should have done."

Verdict for the plaintiff for \$106.15, and judgment thereon; whereupon the defendant took this appeal, assigning for error the answers to points and the portion of the charge above set forth.

Mr. Justice GREEN delivered the opinion of the Court.

The facts of this case do not seem to be involved in controversy. The defendant operates a line of street cars passing through Washington street, in the city of Allegheny. The plaintiff's team, in charge of Orr, the driver, was engaged in hauling along C street, in the same city. In going along C street to his destination, Orr's route crossed Washington street, and the defendant's tracks therein, at right angles. When he reached the intersection he neither stopped nor looked, but drove directly upon the defend-

ant's track. When in this position, he looked up, and saw the car just upon him. There was no time to escape. His wagon was crushed and he was injured.

This action is brought by his employer, who is affected by the contributory negligence of his employee. The question upon which the case turned in the court below was, whether the evidence of the plaintiff established contributory negligence in Orr, the driver. Upon this subject the learned judge instructed the jury that there was no rule of law that required the driver to "stop, look and listen," but that it was for them to determine what it was his duty to do, and whether he actually did it on this occasion. They were thus left without any rule of law to apply, at liberty to make one to suit themselves for the purposes of this case, which the next jury might change to suit themselves, or disregard altogether. We cannot agree to this. The street railway has become a business necessity in all great cities. Greater and better facilities and a higher rate of speed are being constantly demanded. The movement of cars by cable or electricity along crowded streets is attended with danger, and renders a higher measure of care necessary, both on the part of the street railways and those using the streets in the ordinary manner. It is the duty of the railway companies to be watchful and attentive, and to use all reasonable precautions to give notice of their approach to crossings and places of danger. Their failure to exercise the care which the rate of speed and the condition of the street demand, is negligence. On the other hand, new appliances, rendered necessary by the advance in business and population in a given city, impose new duties on the public.

The street railway company has a right to the use of its track, subject to the right of crossing by the public at street intersections; and one approaching such a place of crossing must take notice of it, and exercise a reasonable measure of care to avoid contact with a moving car. It may not be necessary to stop on approaching such a crossing, for the rate of speed of the most rapid of these surface cars is ordinarily from six to nine miles per hour; but it is necessary to look before driving upon the track. If, by looking, the plaintiff could have seen and so avoided an approaching train, and this appears from his own evidence, he may be properly nonsuited: *Marland v. R.R.*, 123 Pa. St., 487. It is in vain for a man to say he looked and listened who walks directly in front of a moving locomotive. An injury so received is due to his own gross carelessness. *Railroad v. Bell*, 122 Pa. St., 58;

Moore v. RR., 108 Id., 349. Orr testifies that he knew the crossing, that he listened for the sound of a gong, but, not hearing it, drove on the track, and he was instantly struck. He drove in front of a moving car so near to him as to make a collision inevitable. If he had looked he could have seen the car and stopped, and the accident would have been avoided. Not to do so was, in the language of Railroad v. Bell, "gross negligence," and justly defeats the action brought to recover from another damages that were self-inflicted. It is the duty of one about to cross a street railway track to look, so that he may not walk directly in front of a moving car to be struck by it. The first assignment of error is sustained. So, also, are the second and third.

The judgment is reversed.

Supreme Court of Nebraska.

CASS COUNTY BANK v. BRICKER.

COMPOUNDING FELONY—RECLAMATION OF CONVERTED PROPERTY.

The owner of property stolen or wrongfully taken may reclaim the same, or receive compensation for the injury sustained, and this compensation may be by promissory note, signed by sureties; and, unless there is an agreement on his part to forbear the further prosecution of the case, or to suppress some of the evidence, the defense of compounding a felony will not be available against the note.

Decided May 18, 1892.

Mr. Chief Justice MAXWELL delivered the opinion of the Court:

This action was brought on a promissory note, as follows: "\$344.00. Plattsburgh, Nebr., July 7, 1883. One day after date we jointly and severally promise to pay to the order of the Bank of Cass County three hundred and forty-four dollars, value received, with interest at ten per cent. per annum, from maturity until paid. Negotiable and payable at the Bank of Cass County. William R. Shaw, Adam Bricker, W. R. Anthony." Bricker alone answered the petition, in which he evidently sought to allege the compounding of a felony. In the briefs, however, the defense is claimed to be duress, that is, that the note in question was executed under duress. On the trial of the cause the jury returned a verdict for the defendants, upon which judgment was rendered. It appears from the record that some time prior to the giving of the note in question William R. Shaw had executed a mortgage upon certain personal property possessed by him to a man named

Sharp; that Sharp transferred the mortgage and note accompanying the same to the plaintiff; that the defendant Shaw either sold the property or removed it from the county—the proof on that point is not very clear, nor is it material now. It also appears that Shaw was arrested on complaint of the plaintiff, and placed in the jail of Cass County, apparently awaiting an examination, when the defendant, with one Anthony, gave a new note for the amount of the debt and costs, and the former note and mortgage were delivered to the defendant Bricker, but, whether so delivered or not, it cannot affect the case. On the 4th of October, 1884, the defendant paid on the note in question the sum of \$34.40, and October 17, 1887, the sum of \$50. The remainder of the note is unpaid. Section 177 of the criminal code provides: "If any person shall take money, goods, chattels, lands, or other reward, or promise thereof, to compound any criminal offense, such person shall be fined in double the sum or value of the thing agreed for or taken, but no person shall be debarred from taking his goods or property from the thief or felon, or receiving compensation for the private injury occasioned by the commission of any such criminal offense." In School District v. Collins, (Dak.) 41 N. W. Rep. 466, the defense was that the note was given to compound a felony. The court says: "In defenses of this kind, where it is sought to invalidate a written contract by parol evidence, it should be made to clearly appear that the arrangement was in contravention of public policy. Vague and indefinite statements are not sufficient. The understanding or agreement relied on must be positive and certain; entered into and relied upon by both parties. Says Judge Caldwell in Swann v. Swann, 21 Fed. Rep., 299: 'No court ought to refuse its aid to enforce a contract on doubtful and uncertain grounds. The burden is on the defendant to show that its enforcement would be in violation of the settled public policy of this State, or injurious to the morals of its people. Vague surmises and flippant assertions as to what is the public policy of the State, or what would be shocking to the moral sense of its people, are not to be indulged in.' Says the Lord Chief Justice in Walsh v. Fussell, 6 Bing., 163: 'To hold a contract void on the ground of its impolicy or inconvenience, we ought to be clearly satisfied that the performance of it would be necessarily attended with injury or inconvenience to the public.' In Malli v. Willett, 57 Iowa, 705, 11 N. W. Rep., 661, one witness being asked what the consideration was, said that A

wanted to 'prosecute' B for adultery with his wife, and the note 'was executed so as not to have any fuss with him about it—to settle up that matter.' The court held that the design to compound a criminal prosecution did not clearly appear, and that a verdict should have been for the plaintiffs. Says the Chief Justice: 'An agreement is not void on this ground, unless it expressly and unquestionably contravenes public policy, and is manifestly injurious to the interests of the State.' Iowa likens it to declaring a law unconstitutional and void. Says Judge Cole in *Richmond v. Railway Co.*, 26 Iowa, 202: 'The power of courts to declare a contract void for being in contravention of sound public policy is a very delicate and undefined power, and, like the power to declare a statute unconstitutional, should be exercised only in cases free from doubt.' In *Kellogg v. Larkin*, 3 Pin., 123, the court says: 'Before a court should determine a contract which has been entered into in good faith, stipulating for nothing that is *malum in se*, * * * to be void as contravening the policy of the State, it should be satisfied that the advantage to accrue to the public for so holding is certain and substantial, not theoretical or problematical. He is the safest magistrate who is more watchful over the rights of the individual than over the convenience of the public, as that is the best government which guards more vigilantly the freedom of the subject than the rights of the State.'" In *Johnston v. Allen*, 22 Fla., 224, it was held that, "where a valid acceptance is transferred by the payee to a person under arrest for embezzlement, to enable him to effect a compromise, and is given by him to the persons from whom he has embezzled, to secure the payment of whatever sum might be due from him, the acceptance is not thereby made invalid, as given to compound a felony, unless, in consideration thereof, the persons from whom he embezzled agreed to abandon the prosecution against him; and even then the liability of the acceptor is not affected if he was not privy to the agreement." In *Barrett v. Weber*, 125 N. Y., 18; 25 N. E. Rep., 1068, it was held that a mortgage given by a married woman to secure the payment of goods stolen by her husband is not void as given to compound felony, in the absence of any promise on the part of the mortgagees to forbear prosecution for the crime, or to suppress evidence tending to prove it; and in *Schultz v. Catlin* (Wis.), 47 N. W. Rep., 946, where the felony was denied by the defendant, it was held a note given for the debt could not be avoided by the defense that it was given to

compound a felony. In order to establish the defense of compounding a felony it must appear that there was an agreement not to prosecute the case, or to suppress evidence tending to prove it. The owner of goods stolen has a right to receive compensation therefor. The person accused may be anxious to make restitution, but be unable to pay at once, and hence must give security, either personally or through his friends; and the mere fact that he is liable to be punished for the crime will not invalidate the obligation. This rule was established in *Mundy v. Whitmore*, 15 Neb., 647; 19 N. W. Rep., 694, and is believed to be sound law; and this disposes of the question of duress so strongly urged on behalf of the defendant in error.

Tenancy by the Curtesy.

In the recent case of *Hope v. Hope*, which appears in the current number of our reports, 61 Law J. Rep. Chanc. 441; L. R. (1892) 2 Chanc., 336, it was, for the first time, definitely decided that notwithstanding the provisions of section 1, subsection 1, and section 5 of the Married Woman's Property Act, 1882 (45 & 46 Vict. c. 75), a husband is still entitled on the death of his wife to an estate by the curtesy on her undisposed of real estate. It is scarcely needful to state what the nature of a tenancy by the curtesy is; but we may, nevertheless, be permitted to quote the following words in which its characteristics have been conveniently summed up: "Where the wife is seized of or equitably entitled to an estate of inheritance in possession, otherwise than as joint tenant, and the husband has had by her issue born alive during the life of the mother, and capable of inheriting such estate, he will, upon her death, be entitled to such estate for his life as tenant by the curtesy of England." (see Co. Litt. 29, a, b, ss. 35, 52). In other words, the estate by the curtesy was an extension during the husband's whole life, arising on birth of heritable issue, of his freehold in right of his wife during their joint lives, (Burton on real property, pp. 145, 146) where the estate of the wife was an estate of inheritance in possession Fearne, C. R., 341, 342.

The case of *Hope v. Hope* came before Mr. Justice Stirling, and the question which his lordship had there to determine was whether the language of the Married Woman's Property Act, 1882, was sufficient to deprive a husband of his long-established right to an estate by the curtesy. Under section 1, of that Act a married woman is capable of acquiring, holding, and

disposing by will or otherwise of any real or personal property as her separate property in the same manner as if she were a *feme sole*. The Act thus excludes entirely the husband's marital rights during the life of the wife. It does not, however, expressly provide that property to which it applies shall devolve, on the wife's death, as if she were a *feme sole*. So far as personality is concerned, the same learned judge some years ago decided that the statute did not debar the husband's *jus mariti* in case of the death of his wife intestate. See *in re Lambert's estate*; *Stanton v. Lambert*, 57 Law J. Rep., Chanc., 927; L. R. 39 Chanc. Div., 626, 633. But as to realty the question had not, until the present case of *Hope v. Hope*, been the subject of judicial decision, and doubts had been expressed by some text-writers whether the husband's estate by the courtesy was not entirely excluded by the Act. For example, in 'Wolstenholme and Brinton on the Conveyancing and Settled Land Acts,' 6th ed., 199, it is said that 'if the estate by the courtesy still exists, it is wholly changed in its nature. The husband has no present freehold in his wife's right, nor can he have any remainder, there being no particular estate. He must take, if at all, by *quasi* descent, in the same manner as the heir. It seems difficult to say that the act impliedly creates a new kind of descent.' On the other hand, in 'Key and Elphinstone's Precedents in Conveyancing,' 3d ed. vol. ii., 469, there is the following: 'It has been doubted whether the Married Woman's Property Act, 1883, ss. 1, 2, 5, does not operate to deprive a husband of all his common law rights in respect of his wife's property, not only during her life but also in the event of her death intestate.' The learned authors go on to observe: 'Under the late act a married woman is, for the purpose of "acquiring, holding, and disposing of" her property, made a *feme sole*, so that during the coverture the husband's rights are altogether excluded at law and in equity; but the act does not purport to do more than this, and upon the wife's death without having exercised her power of disposition, its operation is spent, so that the husband's rights in this respect remain as they were before the act (*in re Lambert*, ubi sup.), which seems to have set this question at rest.' Several other text-writers of authority were also in favor of the view that the husband's right to courtesy still existed with respect to the wife's freeholds of inheritance in the event of her dying intestate.

As regards property settled simply to the separate use of a married woman, the question was,

as Mr. Justice Stirling pointed out, dealt with by the late Master of the Rolls (Sir George Jessel) in *Cooper v. MacDonald*, 47 Law J. Rep., Chanc., 373; L. R. 7 Chanc. Div., 288, 295, and Mr. Justice Stirling considered that the words used by Sir George Jessel in his judgment in that case applied, *mutatis mutandis*, to the Married Woman's Property Act, 1882. No doubt whatever, therefore, can be entertained that Mr. Justice Stirling, in *Hope v. Hope*, has rightly decided the point before him. But if there had been room for any doubt it would seem to be entirely removed by the reference in the Settled Land Acts, 1882 and 1884, to tenancy by the courtesy. There it appears to be assumed that a husband's estate by the courtesy had not been destroyed. The Settled Land Act, 1882, was passing through Parliament in the same session as the Married Woman's Property Act, although the former statute actually received the royal assent eight days earlier than the latter one—viz., on August 10, 1882. Section 58 of the Settled Land Act, 1882, which treats of limited owners generally, by subsection (1) (viii) confers on a tenant by the courtesy the powers of a tenant for life under that act, as if he were a tenant for life as defined in that act. But two years after the passing of the Married Woman's Property Act, 1882, came the Settled Land Act, 1884, containing the following enactment in section 8: "For the purposes of the Act, 1882, the estate of a tenant for life by the courtesy is to be deemed an estate arising under a settlement made by his wife."

Legal Notices.

Rule of Court.

RULE 20. * * * * Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other paper which may be specially ordered or which may be selected by the parties.

FIRST INSERTION.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, Holding a Special Term for Orphans' Court Business.

October, 15th, 1892.

In the case of Henry A. Griswold and Charles Hayes, executors of ARTHUR CHRISTIE, deceased, the executors aforesaid have, with the approval of the court, appointed Friday, the 18th day of November, A. D. 1892, at 11 o'clock p. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the executors will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
42 No. 4533. Edwards & Barnard, Proctors.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphan's Court business, letters of administration on the personal estate of JAMES T. CLOTHWORTHY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of October, 1892.

42 E. H. Thomas, Proctor. JAMES CLOTHWORTHY,
1148 7th St. n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

the 18th day of October, 1892.

Thomas Hardy, J. Francis Hardy, Mary D. Hardy, Augustus W. Smith and Elizabeth H. Smith, his wife, vs. Cephas Hardy and Amanda Hardy, his wife.

No. 14,158. Equity Docket 34.

On motion of the plaintiffs, by Mr. R. B. B. Chew their solicitor, it is ordered that the defendants, Cephas Hardy and Amanda Hardy, his wife, non-residents, and returned not found, be notified by publication to cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to procure a decree for the sale of certain real estate of which John Hardy, late of Montgomery County, Maryland, died, seized and possessed, described in the said bill as situated in the District of Columbia, north of square No. 855.

By the Court.

A. C. BRADLEY, Justice, &c.

True copy. Test:

J. R. Young, Clerk, &c.

42 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Elizabeth C. Robey et al. v. No. 12,968. Equity Docket 33.

Owen Robey et al.

Marion Dorian and John H. Adriams, the trustees in the above entitled cause, having reported to the court that they have sold the real estate in these proceedings mentioned, being lots 84 and 85 of Bates and Callaghan's subdivision of lots 25, 26, section 3, Barry Farm, to Randall Johnson for four hundred and fifty-five (455) dollars and twenty-five (25) cents.

It is, by the court, this 17th day of October, 1892, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown on or before thirty days from the date hereof.

Provided a copy of this be published in the Washington Law Reporter for the successive weeks prior to the expiration of said thirty days.

A. C. BRADLEY, Justice.

A true Copy. Test:

J. R. Young, Clerk.

42 [Filed October 17th, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 12th day of October, 1892.

Barbara T. Jaenemann

v.

Edward T. Mathews et al. No. 14,108. Equity.

On motion of the complainant, by Messrs. Edwards & Barnard, her solicitors, it is ordered that the defendants, Rachel B. Mathews, Charles S. Mathews, Minnie M. Mathews, Charles W. Hayes, Sophia S. Chappell, William Chappell, Louise C. Polk, Trusten Polk, Eliza A. Mathews, Charles A. Mathews, Mary D. W. Mathews, Andrew S. Mathews, William B. Mathews, George W. Mathews, Abbie C. Mathews, Mary C. Mathews, Laura Mandeville and Henry C. Mandeville, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to establish the complainant's title of record to part of lot three (3) in square numbered four hundred and eighty-eight (488) in the City of Washington, D. C., contained within the following metes and bounds: beginning for the same at a point on north E street, 24 feet 4 inches east of the southwest corner of said lot, and running thence north 45 feet; thence east 18 feet; thence south 45 feet, and thence west 18 feet to the place of beginning; and to enjoin defendants from claiming any title to the same adverse to complainant.

By the Court: A. C. BRADLEY, Justice, &c.

True copy. Test: J. R. Young, Clerk, &c.

42 By M. A. Clancy, Asst. Clerk.
[Filed October 12, 1892. J. R. Young, Clerk.]

Legal Notices**This is to Give Notice**

That the subscriber, of New York City, hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters ancillary on the personal estate of WILLIAM J. FLORENCE, late of New York City, New York, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, at the office of Carusi & Miller, 486 La. Ave. on or before the 15th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of October, 1892.

ANNIE T. FLORENCE,
42 Care of Carusi & Miller, Attorneys, 486 La. Ave.

This is to Give Notice

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration c. t. a. on the personal estate of JOHN LYNCH, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of October, 1892.

FRANK T. BROWNING,

Atty. at Law.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

The 12th day of October, 1892.

George J. Sefflerie v. No. 14,085. Equity.

Edward T. Mathews et al. { On motion of the complainant, by Messrs. Edwards & Barnard, his solicitors, it is ordered that the defendants, Rachel B. Mathews, Charles S. Mathews, Minnie M. Mathews, Charles W. Hayes, Sophia S. Chappell, William Chappell, Louise C. Polk, Trusten Polk, Eliza A. Mathews, Charles A. Mathews, Mary D. W. Mathews, Andrew S. Mathews, William B. Mathews, George W. Mathews, Abbie C. Mathews, Mary C. Mathews, Laura Mandeville and Henry C. Mandeville, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to establish the complainant's title of record to the east 20 feet front on E street, and running back the same width, 75 feet to the rear line of said lot, of lot numbered three (3) in square numbered four hundred and eighty-eight (488), in Washington City, D. C., and to enjoin defendants from claiming any title to the same adversely to complainant.

By the Court.

A. C. BRADLEY, Justice, &c.

True copy. Test: J. R. Young, Clerk, &c.

42 By M. A. Clancy, Asst. Clerk.

[Filed October 12th, 1892. J. R. Young, Clerk.]

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of CHARLES E. BLUNT, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of October, 1892.

EVELINA BLUNT,

1720 Mass. Ave.

42 Joseph K. McCammon, James H. Hayden, Proctors.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of JOSEPH A. SMITH, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of October, 1892.

GEO. H. B. WHITE,

Cr. E. L. WHITE,

Pacific Building.

42 E. L. White, Proctor.

Legal Notices**THIRD INSERTION.****This is to Give Notice**

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of EUNICE A. CANFIELD, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 10th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 10th day of October, 1892.

C. A. PRENTISS.

D. WEBSTER PRENTISS.

No. 935 9th St. n. w.

41

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of ANANIAS HERBERT, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of October, 1892.

her

FANNIE F. M. HERBERT,

mark

No. 319 A St. n. e., city.

41 A. B. Duvall, Proctor.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of THOMAS F. RUSSELL, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 3d day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 3d day of October, 1892.

PATRICK O'FARRELL,

41 1425 N. Y. Ave., Washington, D. C.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, letters testamentary on the personal estate of COLUMBUS GREENE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day of October, 1892.

SAMUEL H. GREENE,

41 J. J. Darlington, Proctor. 1320 Q St. n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of MAGDALENA LIPPERT, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of October, 1892.

FRANCIS MILLER,

41 M. A. Mess, Proctor. 1025 7th St. n. w.

This is to Give Notice

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of ELIZABETH J. STONE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 7th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 7th day of October, 1892.

WILLIAM E. EDMONSTON.

T. E. WAGGAMAN.

41 Wm. E. Edmonston, Proctor.

Legal Notices**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

The 7th day of October, 1892.

James Gilliss, Executor, Complainant, v.

v. Eq. 14,141. Doc. 34.

Fannie Gilliss et al., Defendants.

On motion of the plaintiff, by Mr. Randall Hagner, his solicitor, it is ordered that the defendants, Matilda M. Raymond, Fannie Raymond, Sallie L. Gilliss, Sarah Leigh Carow, L. Sheldon Carow and William Irving Gilliss, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to construe the will of Rebecca S. Gilliss, late of the District of Columbia, deceased, and to finally settle the estate and distribute the same.

By the Court: A. C. BRADLEY, Justice, &c.

41 True copy. Test: J. R. Young, Clerk, &c.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 10th day of October, 1892.

Clara A. Philipson

v. No. 14,154. Docket 34.

Carl G. S. Philipson. On motion of the plaintiff, by Mr. W. Preston Williamson, his solicitor, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default. The object of this suit is for an absolute divorce on the grounds of desertion, drunkenness and cruelty.

By the Court: A. C. BRADLEY, Justice, &c.

41 True copy. Test: J. R. Young, Clerk, &c.

[Filed October 10, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 10th day of October, 1892.

William A. H. Turner

v. No. 14,135. Docket 34.

Lillie Turner. On motion of the plaintiff, by Mr. George W. Ree, his solicitor, it is ordered that the defendant cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default. The object of this suit is divorce *a vinculo matrimonii*, on the ground of desertion.

By the Court: A. C. BRADLEY, Justice, &c.

True copy. Test: J. R. Young, Clerk, &c.

41 By L. P. Williams, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

This 11th of October, 1892.

In re estate of GARDNER K. ANDREWS, late of Washington County, District of Columbia. No. 5221. Ad. D. 18. Application having been made for the probate of a paper-writing propounded as the last will and testament, and for letters testamentary on the estate of said Gardner K. Andrews, deceased, by Alice R. Andrews.

Notice is hereby given to all concerned to appear in this court on Friday, Nov. 4th, 1892, at 1 o'clock p. m., to show cause, if any exist, against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter once in each of three successive weeks before said day.

By the Court: A. C. BRADLEY, Justice.

A true copy. Teste. L. P. WRIGHT, Reg. of Wills, D. C.

41 J. Carter Marbury, Proctor for applicant.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

the 5th day of October, 1892.

John C. Heald v. No. 14,168. Equity. Docket 34.

T. Owen Berry et al. On motion of the plaintiff, by Mr. A. S. Worthington, his solicitor, it is ordered that the defendants, T. Owen Berry, Fannie W. Berry, Samuel H. Berry and Anna R. Berry, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to have vested in the complainant all the right, title and interest of the defendants in and to that part of a tract of land known as Ox Hill, which is in the District of Columbia—said part containing about 16.56 acres and lying between the Potomac River and the southwestern end of the southeastern boundary of said District.

By the Court: A. C. BRADLEY, Justice, &c.

A true copy. Test: J. R. Young, Clerk, &c.

41 By M. A. Clancy, Asst. Clerk.

The Washington Law Reporter.

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WASHINGTON, D. C., - - - NOVEMBER 3, 1892

Supreme Court of the District of Columbia. IN GENERAL TERM.

IN THE MATTER OF WILLIAM A. HOEVELER AND THOMAS J. MC- TIGHE FOR THE REISSUE OF LETTERS PATENT 312,470.

1. It seems to be well settled that where a matter is intrusted to the adjudication of the head of a department or an executive officer of the Government, to be determined by him, his decision cannot be reopened, set aside, and a different result ordered by his successor, except for fraud, clerical error apparent on the face of the proceedings, or newly discovered evidence presented within a reasonable time and under such circumstances as would be a sufficient cause for granting a new trial in a court of law.
2. The decision of the Assistant Commissioner of Patents is of the same dignity and authority as that of the commissioner, no appeal lying from the former to the latter, and no supervisory power over the decisions of the assistant being vested in the commissioner. The decision of the assistant is that of the commissioner.
3. The statute which provides for an appeal to this court from the decision of the commissioner limits the power of revision to the "points set forth in the reasons of appeal."

APPEAL from the Commissioner of Patents.
Mr. PHILIP MAURO for appellants.

Mr. W. S. CASE for Patent Office.

Chief Justice BINGHAM delivered the opinion of the Court:

On the 17th day of February, 1885, Letters Patent No. 312,470 were issued to William A. Hoeveler and Thomas J. McTighe. On the 28th day of September, 1885, the patentees filed this application for a reissue. The invention is for a system for conveying and distributing natural gas.

The applicants for reissue claimed and still claim that through the mistake and misunderstanding of their solicitors the patent issued

without including a valuable feature of the invention, and the application for reissue is to correct the claimed mistake, and having been made within eight months after the issuing of the original patent it is claimed no laches can be imputed to them.

The reissue was refused by the primary examiner on the ground that the applicants had abandoned their right to the subject matter of the claims sought to be obtained by the reissue. The examiner found (1) that said claims were in substance the same as a claim made in the original application, and which upon rejection was erased by the solicitor in charge of the case; and (2) that such act by the agent amounts to an abandonment by the principal of the subject matter of the claim so erased. Issue was taken on both these propositions, and the matter carried by appeal to the Commissioner of Patents.

The result of the appeal to the Commissioner was, that the adverse decision of the lower tribunals were overruled and it was decided that the claim of the patentees, that by mistake of their solicitors a material patentable claim had been omitted from the patent was true, and the appellants were declared to be lawfully entitled to the reissue as prayed.

This decision was made April 10, 1888, by Assistant Commissioner Vance, and appellants' claim was a final decision not subject to review by the successor of the commissioner who made it. It is claimed that the appellants are yet under this decision entitled to a patent, and that one would have issued to them at once but that an interference was found to exist with other claimants of the same invention, which interference was hotly contested and was finally decided by Commissioner Mitchell, the successor of the commissioner who decided Hoeveler and McTighe's appeal on the 15th day of July, 1890, in favor of Hoeveler and McTighe.

It is claimed by the appellants that it then became the duty of Commissioner Mitchell, to reissue the patent to them, instead of which he, on March 26, 1891, *sua sponte*, opened the decision of his predecessor before mentioned as rendered April 10, 1888, and upon the same state of facts but with a different view of the law reversed the same.

From the latter decision, Hoeveler and McTighe appealed to this court. The appellants contend that Commissioner Mitchell could not lawfully reopen the final decision of his predecessor, Acting Commissioner Vance, set it aside and order a different result upon the same state of law and facts.

It appears from the record that when the interferences were declared the adversaries of Hoeveler and McTighe moved to dissolve the same on the ground that the latter were estopped to claim the subject matter involved. This raised again the whole question previously passed upon by the commissioner in his decision of April 10, 1888.

These motions were referred by the examiner to Commissioner Hall, and it is said, were elaborately argued before him.

On reconsideration of the whole matter, Commissioner Hall seems to have affirmed the decision of the Assistant Commissioner of April 10, 1888, on the 28th day of September, 1888, in these words :

"The examiner is instructed to proceed in considering the application of Hoeveler and McTighe in conformity with the decision of the Assistant Commissioner. Should Hoeveler and McTighe finally prevail in these interferences, the examiner is directed to call the attention of the commissioner in person to the application before passing the same to issue."

From this paper it appears that Commissioner Hall examined personally the grounds of the decision of the Assistant Commissioner, for the purpose of ascertaining, as the law and rules require before declaration of and interference, (Rule 95) whether the parties had the right to make the claims involved; and it further seems that he affirmed the decision and directed that it be followed. It also appears that for some purpose which he did not deem necessary to express, he thought it proper and expedient to direct that his attention be called to the application in the event the interferences are decided in favor of Hoeveler and McTighe before issuing a patent. Just what may have been the purpose in giving the latter direction must remain a matter of conjecture.

The appellants say it can only mean that Commissioner Hall desired to keep his eye on the case so that he might see that the subsequent proceedings relating to interferences were correct, while Commissioner Mitchell seems to have construed it to mean an intention on the part of Hall to reserve the right to reconsider the decision of Assistant Commissioner Vance and as an authority to him (Mitchell) to do so as Hall's successor.

Rule 95 of the Patent Office is as follows :

"Before the declaration of interference all preliminary questions must be settled by the primary examiner, and the issue must be clearly defined, the invention which is to form the subject of the controversy must be decided to be

patentable, and the claims of the respective parties must be put in such condition that they will not require alteration after the interference shall have been finally decided, unless the testimony adduced upon the trial shall necessitate or justify such change."

Indeed it does not seem to be contended that Assistant Commissioner Vance had not full authority to make the decision he did, but it is contended by counsel for the appellee that his decision was wrong and that Commissioner Mitchell had the power to open, review and reverse it.

We have thus presented to us the question as to the power of an executive officer of one administration to reverse a decision of his predecessor of a former administration.

It seems to be well settled that where a matter is intrusted to the adjudication of the head of a department or an executive officer of the government, to be determined by him, his decision cannot be reopened, set aside, and a different result ordered by his successor, except for fraud, clerical error apparent on the face of the proceedings, or newly discovered evidence presented within a reasonable time and under such circumstances as would be a sufficient cause for granting a new trial in a court of law.

This doctrine has been maintained by numerous opinions of the Attorneys General.

Mr. Wirt, in an opinion given to the Secretary of the Navy in 1825, said :

"Each administration has already as much as it can do in the current business which belongs to it; but if to this is to be superadded the burden of reviewing the acts of preceding administrations, in which individuals may suppose themselves to have been aggrieved, it is manifest that the burden will become immediately insupportable. Hence, I have understood it to be a rule prescribed to itself by each administration to consider the acts of its predecessors conclusive as far as the executive is concerned."

2 Opns. Atty. Genl., 9.

Attorney General Taney, in 1831, declared that a final decision, upon a knowledge of all the facts, made by an officer authorized to decide on claims against the government, was binding upon and not liable to be opened and reversed by his successor in office (*Id.*, 464), and the principle was approved by Attorney General Nelson in 1844 (4 *Id.*, 341), and Attorney General Toucey in 1848. 5 *Id.*, 30.

Mr. Reverdy Johnson, in 1850, ruled upon the authority of the case of the United States v. Bank of the Metropolis, 15 Peters, 401, that the decision of the Secretary of the Treasury,

while the Land Office belonged to his Department, was *res judicata*, and "whether right or wrong," could not be overruled by his successor, the Secretary of the Interior. 5 Id., 244.

The same Attorney General, in another opinion, 5 Id., 124, said :

"If the decision pronounced is *quasi* judicial; if the head of a department is by law made the judge of the claim, to decide upon its existence and its extent, and his decision is erroneous, it is equally conclusive, whether this error be from a misconception of the facts or the law.

To this effect Attorney General Johnson again laid down the law in Sibbald's Case (5 Id., 177), when he said :

"The questions submitted to your predecessor by the resolution of 1846 were combined questions of law and fact. Over each his jurisdiction was made complete and exclusive. * * * It necessarily follows that his decision upon all matters of fact connected with the claim is as final as it is upon all questions of law involved in it. There is no power in his successor to review his decision upon the grounds of error as to the one or the other. It has more than once been judicially held that decisions of this character are final. The safety of the Government and the desired certainty of the law alike establish the soundness of the doctrine. Errors in calculation may be corrected, but no errors of decision upon controverted facts. As to these the matter is past relief. The decision stands as the law of the case, ever binding and conclusive, until Congress thinks proper, by law, to reopen it. I answer your first question, therefore, by saying that it is not your right, and of course not your duty, to review the decision of your predecessor upon the ground assumed in the inquiry."

To the same effect are the opinions of Mr. Black, 9 Id., 34; Mr. Bates, 10 Id., 225; Mr. Stanbery, 12 Id., 169, 356; Mr. Hoar, 13 Id., 33, 326; Mr. Akerman, 13 Id., 387; Mr. Bristow, 13 Id., 456; Mr. Williams, 14 Id., 275; Mr. Devens, 15 Id., 316, 425; 16 Id., 489.

The rule is stated by Attorney General Devens in the following language :

"According to a well settled rule of administrative law, often mentioned with approval by the Attorneys General, the decision made by the former secretary in 1875 must be regarded as binding upon his successor, the present secretary, unless it shall appear to be founded upon a mistake of fact, arising from error of calculation, or unless new and material evidence since discovered is produced, which, had the same been before the department when the

decision was made, would have led to a different result. Except under the circumstances just stated, viz., of mistake arising from error of calculation, or the production of new and material evidence, the present secretary would not be at liberty to disturb or review the decision of his predecessor." 15 Ops. Attys. Genl. 425.

The Court of Claims has often affirmed the same doctrine, Lavalette's Case, 1 Ct. Cls. R., 149; McKee's Case, 12 Id., 504; Hodge's Case, 20 Id., 352; State of Illinois' Case, 20 Id., 342; Day's Case, 21 Id., 264; Rollin and Presbrey v. U. S., 23 Id., 123.

Chief Justice Richardson, in the case of Rollin and Presbrey v. U. S., 23 Ct. Cls., 123, stated the doctrine as follows:

"It has long been held in the Executive Departments that when a claim or controversy between the United States and individuals therein pending has once been fully considered and final action and determination had thereon by an executive officer having jurisdiction of the same, it cannot be reopened, set aside, and a different result ordered by any successor of such officer, except for fraud, manifest error on the face of the proceedings, such as a mathematical miscalculation or newly discovered evidence, presented within a reasonable time, and under such circumstances as would be a sufficient cause for granting a new trial in a court of law."

The late Senator David Davis in reporting the opinion of the Judiciary Committee of the Senate uses the following language (see Jackson's Case, *supra*):

"The principle which has been so often decided, that the final decision of a matter before the head of a department is binding upon his successor when no material testimony is afterwards discovered and produced is now entitled to be regarded as a settled rule of administrative law."

In the *United States v. The Bank of the Metropolis*, 15 Peters, 390, the third clause of the syllabus is as follows:

"The head of a department has not a right to review the decision of his predecessor, allowing a credit, except to correct some error of calculation; if he is of the opinion that the allowance was wrongful, he must have a suit brought." In the same case, pages 400-401, Mr. Justice Wayne delivering the opinion of the court says : "The third instruction asked the court to say, among other things, if the credits given by Mr. Barry were for extra allowances, which the said Postmaster-General was not le-

gally authorized to allow, then it was the duty of the present Postmaster-General to allow such item of credit. The successor of Mr. Barry had the same power, and no more than his predecessor, and the power of the former did not extend to the recall of credits or allowances made by Mr. Barry, if he acted within the scope of official authority given by law to the head of the department. This right in an incumbent of reviewing a predecessor's decisions, extends to mistakes in matters of fact arising from errors in calculation, and to cases of rejected claims, in which material testimony is afterwards discovered and produced. But if a credit has been given or an allowance made, as these were, by the head of a department, and it is alleged to be an illegal allowance, the judicial tribunals of the country must be resorted to, to construe the law under which the allowance was made, and to settle the rights between the United States and the party to whom the credit was given. It is no longer a case between the correctness of one officer's judgment and that of his successor."

See, also, *United States v. Stone*, 2 Wallace, 535, where Mr. Justice Grier says: "The patent is but the evidence of the grant and the officer acts ministerially and not judicially. But one officer of the Land Office is not competent to cancel or annul the act of his predecessor.

It appears in the case of Stephen Hall (7 O. G., 559, and 8 id., 46) that Commissioner Leggett in his return to the rule as cause for his action, said: "First, my predecessor had evidently deliberately decided that a patent could not be granted, and under the practice in all the departments which, if not statutory, has the force of law, I am not at liberty to review his decision." And it further appears that Commissioner Duell, the successor of Leggett, said with reference to the rule referred to by his predecessor: "I acknowledge the force of the rule in those cases where a final adjudication upon all the facts has been had."

The position of the counsel who filed a brief, for the Patent Office, in relation to the authority of Commissioner Mitchell to reopen and reverse the decision of Assistant Commissioner Sparks, is thus stated in his brief.

"But the appellants urge that the commissioner erred and exceeded his discretionary powers in rehearing the case and refusing this reissue application when it had already been favorably acted upon by his immediate predecessor in office.

"The record in the case shows that upon the original hearing for a reissue, the then Assist-

ant Commissioner Vance decided in favor of the applicants.

"That Mr. Commissioner Mitchell after his accession to office, reopened the case, and upon hearing, reversed his predecessor's action, and refused the patent.

"It is difficult to see upon what grounds the appellants can successfully urge this point here.

"Cases in the Patent Office are heard by the Commissioner of Patents, and his individuality is not a question of moment in an appeal before this court.

"Constructively the Commissioner of Patents is always the same person.

"If for good and sufficient cause, in his opinion, the interests of the public demand that a case shall be reheard, it is within the powers conferred upon him by statute to order a rehearing, and if he finds it necessary, reverse the earlier decision.

"It appears from the record in this case that there was sufficient cause.

"The action of Mr. Commissioner Hall—who was the immediate superior of Mr. Vance—in ordering that the case be submitted to him in person before it passed to issue, was, in Mr. Mitchell's opinion, binding upon himself as Mr. Hall's successor. It is not necessary to go into that matter here.

"The jurisdiction conferred upon this court is to revise such action of the commissioner, affecting the merits of the invention in controversy, as the court shall deem necessary upon a proper hearing.

"We respectfully submit that matters of Patent office practice, and questions arising thereunder which have no bearing on the merits of the case appealed are clearly not reviewable by this court.

"The sole question is upon the merits of the appellants' case, and upon the justice or the injustice of the commissioner's decision in refusing them a patent in view of the matters of law and fact which the record discloses."

Neither statute or other authority is cited in support of the position which counsel assumes, viz: that Commissioner Mitchell had the rightful power to reopen and reverse the decision of Assistant Commissioner Vance, nor are we furnished with reasons or arguments in favor of such a power beyond what appears in the foregoing extract from the brief.

It appears to us that the authorities before cited are applicable to the question of the power of Commissioner Mitchell to make this order of reversal. The fact that the original order in favor of reissue was made by the then

assistant commissioner does not affect the question, for it appears that the decision of the assistant commissioner is of the same dignity and authority as the commissioner, no appeal lying from the former to the latter and no supervisory power over the decisions of the assistant is invested in the commissioner more than over his own. In other words the decision of the assistant is that of the commissioner.

Whatever may be supposed to have been the purpose of Commissioner Hall in his order to the examiner of September 28, 1888 to call his attention to the case before issue, it is clear to us, that he could not thereby invest himself or his successor with a power to rehear the question of the right of Hoeveler and McTighe to a reissue which the law would not otherwise confer.

Aside from the principle of law which we have considered applicable to all of the departments of the government as to the power of an officer to set aside or annul the action of his predecessor, Rule 139 of the Rules of Practice in the Patent Office is as follows: "139. Cases which have been deliberately decided by one commissioner will not be reconsidered by his successor except in accordance with the principles which govern the granting of new trials."

Inasmuch as it is not claimed that Commissioner Mitchell had facts before him which were not before Assistant Commissioner Vance, nor that there was not a full hearing upon the facts and law, before the latter, nor is it claimed that there was fraud practiced in procuring the decision by Vance, we cannot perceive what grounds were before Commissioner Mitchell requiring him *sua sponte* to review and reverse the former decision. None are disclosed by the record. It is intimated by counsel for the appellee that upon appeal this court cannot consider the question of the power of Commissioner Mitchell to reverse his predecessor because our power under the law "is to revise such action of the commissioner affecting the merits of the invention in controversy, as the court shall deem necessary upon a proper hearing." Before Commissioner Mitchell could decide that the appellants were not entitled to a reissue he was compelled to set aside the order of Commissioner Vance, both of which things he did in one order, which is the order appealed from. Without reversing the order of Vance he had but one duty which he could perform and that was to reissue the patent. Without doing so he proceeded without authority of law to remove the obligation to reissue resting on him by reversing the decision that

the invention was patentable and meritorious and then deciding that it was not patentable or meritorious; and yet counsel gravely suggests that the order of reversal does not affect the merits of the invention. We think further comment on this point unnecessary. We may remark, however, that the statute which provides for an appeal to this court from the decision of the commissioner limits our power of revision to the "points set forth in the reasons of appeal." The second point in appellants reasons of appeal is that Commissioner Mitchell erred in reopening and reversing the final decision of his predecessor. We are unanimously of the opinion that the record does not disclose any grounds sufficient in law to authorize Commissioner Mitchell to make the order of March 28, 1891, reversing the order of Assistant Commissioner Vance of April 10, 1888, and thereupon deciding that the appellants were not entitled to a reissue of the patent. We therefore order that the said order of Commissioner Mitchell of March 28, 1891, be set aside and the said order and decision of Assistant Commissioner Vance be restored in full force and effect and the case remanded to the Commissioner of Patents for further proceedings.

Counsel have presented us with an elaborate argument with citations to numerous authorities both pro and con upon the questions involved in the hearing before Assistant Commissioner Vance which ultimated in his decision of April 10, 1888, but inasmuch is that order and decision is not before us on appeal for revision nor in any way except as we have already indicated, we are not authorized to express any opinion nor would it be appropriate that we should upon the merits of the controversy involved in that decision.

A certain lawyer of this city, who is distinguished not only in his profession but as a man of affairs, owns a delightful summer home in Vermont. His neighbors there tell this story about his youngest child, a girl not more than ten years of age. After much coaxing, this little girl had prevailed upon her father to buy her a donkey and a cart. The first day of the donkey's arrival he was permitted to brouse on the lawn. The child followed the little animal about, and thinking his countenance wore an uncommonly sad expression she cautiously approached him, and, stroking his nose gently with her soft little hands, cooed in his ear: "Poor donkey! you feel lonesome, don't you? But never mind, papa will be here to-morrow, and then you will have company.—*New York Times*.

Circuit Court of Franklin Co., O.
 .
 SECOND CIRCUIT.

IN THE MATTER OF THE PETITION OF
 EDWARD KLINE.

1. The Act of May 4, 1885, familiarly known as the "Habitual Criminal" act, is a valid enactment, as it does not attempt to confer judicial or executive powers upon the managers of the penitentiary, nor to provide for the further punishment of offences committed before its passage, nor to place the accused more than once in jeopardy for the same offence committed thereafter.
2. The validity of a statute which is the sole authority for a sentence of imprisonment may be tested by proceedings in *habeas corpus*.

January Term, 1892.

Justices SHEARER, STEWART and SHAUCK, sitting.

HABEAS CORPUS.

The petitioner alleges that he is unlawfully restrained of his liberty by the Board of Managers and the Warden of the Ohio Penitentiary under a sentence of the Court of Common Pleas of Montgomery County, for three offenses of burglary and larceny, the first committed November 21, 1877, the second September 30, 1881, and the third May 30, 1889, the sentence being that he should be imprisoned in the penitentiary for the term of two years, and at the expiration of said sentence he should not be discharged therefrom, but detained therein for and during his natural life, and that said sentence beyond the term of two years, was without authority of law, and the imprisonment of the petitioner beyond that term unlawful.

By his return the warden shows that he holds the petitioner in custody under the following sentence, entered October 14, 1889 :

The State of Ohio v. Edward Kline. Indictment for burglary and larceny and for being an habitual criminal.

The said Edward Kline having been tried and found guilty of burglary and larceny, and for being an habitual criminal, it is therefore the sentence of the court that he be imprisoned in the penitentiary of this State and kept at hard labor for the term of two years, and that he pay the cost of this prosecution taxed at \$117.53, and at the expiration of said sentence, he shall not be discharged therefrom, but shall be detained therein for and during his natural life, as provided by section 2, Vol. 82 Ohio L., page 237.

Mr. Justice SHAUCK delivered the opinion of the Court :

Upon the allegations of the petition and the admissions of the return, counsel for the petitioner challenges the constitutionality of the Act of May 5, 1885, commonly known as the "Habitual Criminal" act, now sections 7388-10

of the Revised Statutes. If the act is repugnant to any provision of the constitution, its invalidity may be determined in this proceeding, since the unexpired portion of the petitioner's sentence rests upon no other authority. *Ex parte Siebold*, 100 U. S., 176.

That this statute is found in the chapter relating to the management of the penitentiary and the imprisonment of convicts therein, instead of the title relating to crimes and offenses, is not ground for questioning its validity. The connection in which a statute is placed, may aid in determining its meaning where that is otherwise doubtful, but it cannot defeat a competent and clearly expressed legislative purpose.

Whether the legislature attempted by this act to confer judicial power upon the managers of the penitentiary must be determined by its provisions. While it confers a wide discretion upon the managers with respect to convicts, that discretion is limited to persons who, in the judicial tribunals, have been adjudged both to be guilty of the specific felony committed after the passage of the act, and charged in the indictment, and to have been previously twice convicted and imprisoned for felonies. The petition alleges that Kline was convicted of three felonies. Excluding interference, this probably means that he was convicted of burglary, and found to be a person who had previously been twice convicted, sentenced and imprisoned for felonies. The return shows that he had been "tried and found guilty of burglary and larceny and for being an habitual criminal." This implies that the offense of burglary committed after the passage of the act and the two previous imprisonments for felonies were charged in the indictment and established by the evidence. The judgment followed this verdict. It appears, therefore, that in the court of common pleas the matters necessary to constitute the petitioner an habitual criminal were charged and determined. Although the act provides that after the expiration of the definite sentence for the felony committed after the passage of the act the managers of the penitentiary may permit the convict to go upon parole, this is not an interference with the executive or judicial powers which are vested by the constitution. *State ex rel. v. Peters*, 43 Ohio St., 629.

But it is said that until actually imprisoned for a felony committed after the passage of the act, Kline was not an habitual criminal, and that the Court of Common Pleas had not authority to sentence him for life. This petition chal-

lenges only the authority of the Court of Common Pleas to impose the sentence in question. It does not call in question the regularity of its proceedings. The finding of the jury that the petitioner was an habitual criminal was conclusive as to all the facts necessary to place him in that legal predicament, as the finding that he was guilty of burglary was conclusive as to all the elements constituting that crime. Presumptively these were all charged in the indictment, and it was not necessary to repeat them in the verdict.

If the authority of the warden to detain the prisoner depends upon this portion of the sentence passed by the Court of Common Pleas, it was authorized by the verdict. But the provision of the statute is that "the liability to be so detained shall be and constitute a part of every sentence, etc." This is a legislative provision touching the effect of the sentence. It does not seem to be a requirement that the court shall formally and in terms adjudge such liability. The difference between this provision, and that of section 6798 of the Revised Statutes is suggestive. It is there provided that "the court shall declare in its sentence" for what period the accused shall be kept at hard labor, etc.

The invalidity of this statute is also asserted upon the grounds that it is *ex post facto* in its operation, and that it places the accused again in jeopardy for former offenses. It is said in argument, though it does not otherwise appear, that Kline was convicted upon an indictment containing two counts, one upon the burglary and larceny committed after the passage of the act, the other upon previous convictions and imprisonments for felonies. If this fact properly appeared it could avail nothing in this inquiry, since it does not concern the power of the court, but only the regularity of its proceedings. It would show that the indictment was framed upon the misconception of the statute which prompts these objections to its validity. The act provides only for the punishment of those who shall be convicted, sentenced and imprisoned in the Ohio penitentiary for felonies committed after its passage. Neither indictment or count upon former offenses, however numerous, would find support in any of its provisions. In its prospective operation the plea of former jeopardy may always be interposed if it goes to all of the felonies charged. The manifest purpose of the statute is to provide for the severer punishment of habitual felons. It does not differ in principle from an ordinance whose validity was recognized in Larney v. City of Cleveland, 34 Ohio St., 589. It is substantially identical with a statute of Massachusetts whose validity was sustained by the Supreme Court of that State upon considerations which apply with equal force here. Commonwealth v. Graves, 29 N. E. Reporter, 579.

The petitioner will be remanded to the custody of the warden.

Court of Appeals of New York.

JULIUS J. FRANK, APPELLANT,
v.
EDWARD A. DAVIS, RESPONDENT.

SURPLUS MONEYS REALIZED ON FORECLOSURE FIRST MORTGAGE APPLIED ON SECOND MORT- GAGE—JUNIOR MORTGAGEE ENTITLED TO DE- FICIENCY JUDGMENT ALTHOUGH NO SALE OCCURRED IN HIS ACTION.

Decided October, 1892.

This action was brought to foreclose a mortgage, and the ordinary judgment of foreclosure and sale was given, containing the usual provision for a deficiency judgment and execution thereon. The defendant appealed from the judgment to the General Term and to this court, and the judgment was here affirmed. 27 N. Y., 673. During the pendency of the appeal, proceedings on the judgment were stayed. After the appeal had been taken to this court, an action was commenced to foreclose a prior mortgage upon the same premises, to which the parties to this action were made defendants, and that action resulted in a foreclosure judgment, and the premises were sold under that judgment while the appeal in this action was pending in this court, and a surplus was produced after satisfying the prior mortgage. In a proceeding for the distribution of such surplus, upon the application of this plaintiff, about \$4,000 was applied upon his judgment, and there was still left unpaid thereon upwards of \$3,000. Thereafter, upon his motion, an order was made at special term, directing the clerk to enter and docket a judgment in his favor for the amount of such deficiency and granting him execution therefor. From that order the defendant appealed to the General Term, where it was reversed, and the plaintiff then brought this appeal to this court.

Chief Justice EARL delivered the opinion of the Court:

The judge at special term granted plaintiff's motion upon the authority of the case of Stewart v. Hamel, 33 Hun., 44. The General Term disapproved of the decision in that case and held that the jurisdiction of an equity court to enter a deficiency judgment in an action to foreclose a mortgage is strictly statutory, and that such a judgment can be entered only after a sale under a foreclosure judgment, and a deficiency thus resulting and ascertained.

In England, and in this State prior to the Revised Statutes, the Court of Chancery, in an action to foreclose a mortgage, was not sup-

posed to have jurisdiction to render a personal judgment against the mortgagor upon his bond or covenant to pay the mortgage debt, and such a judgment could only be obtained by an action at law. *Noonan v. Lee*, 2 Black., 499, 501; *Orchard v. Hughes*, 1 Wall., 73; *Dunklay v. Van Buren*, 3 John. Ch., 330; *Jones v. Conde*, 6 John. Ch., 77; *Globe Ins. Co. v. Lansing*, 5 Cow., 380; *Sprague v. Jones*, 9 Paige, 395; *Equitable Life Ins. Soc. v. Stevens*, 63 N. Y., 341, 344; *Burroughs v. Fostevan*, 75 N. Y., 567, 572. This was an exception to the general rule that where a court of equity obtains jurisdiction of an action it will retain it and administer full relief, both legal and equitable, so far as it pertains to the same transactions or the same subject matter. *Lynch v. The Elevated Railroad Co.*, 129 N. Y., 274; *McGean v. The Same*, recently decided in this court. The purpose of this rule was to relieve parties from the expense and vexation of two suits, one equitable and the other legal, where the whole controversy could be adjusted in the one suit. There was no reason, so far as we can perceive, for taking the case of a mortgage foreclosure out of this convenient and beneficial rule; and the law makers of this State took early occasion to change the law by providing that a personal judgment for a deficiency may be given in the foreclosure action against any party liable for the mortgage debt. 2 R. S., 191, Secs. 151, 154. They went further than the equitable rule, and authorized a personal judgment, not only against the mortgagor, as to whom equitable relief could be had, but also against any other person who was obligated for the payment of the same debt.

It was easily held that a contingent decree for the payment of the deficiency could be made before the sale under the foreclosure judgment. *McCarthy v. Graham*, 8 Paige, 480.

The position taken by the defendant (in which the court below sustained him) is extremely technical. It was provided in the Revised Statutes that a personal judgment against the mortgagor might be ordered "for the balance of the mortgage debt that may remain unsatisfied after a sale of the premises," and the code is substantially the same. Sec. 1627. His claim is that as there has been and could be no sale upon the judgment in this action, the deficiency could not be ascertained in the mode mentioned in the statute, and that therefore a deficiency judgment is unauthorized, and that the plaintiff must bring an action at law to obtain such a judgment.

The purpose of the provisions contained in

the Revised Statutes and re-enacted in the code was to change the chancery rule, as it had before been understood, and to bring the practice in foreclosure actions within the general chancery rule above referred to, and even, as we have seen, to extend that rule. The deficiency was to be ascertained by a sale of the mortgaged premises, and not by the estimates of witnessess or other less satisfactory evidence. We are asked to hold that enough of the old chancery rule is left to prevent a deficiency judgment unless the deficiency be ascertained by a sale in the action in which the judgment is asked. We think we are justified in holding that that rule has been entirely swept away, and that the general rule in equity practice above referred to, except as it is modified by the provisions of the code, governs foreclosure as other equitable actions. Where there is a sale under the foreclosure judgment, and after the application of the proceeds there is a balance unpaid upon the mortgage, the deficiency is thus ascertained. But the full purpose of the statute has been accomplished if the deficiency be ascertained, as in this case, by a sale in an action to foreclose a prior mortgage to which the defendant was a party.

The surplus arising from a sale under the prior mortgage is, as to this plaintiff for the purpose of the lien of his mortgage to be treated as real estate. *Moses v. Murgatroyd*, 1 John. Ch. 119; *Dunning v. The Ocean National Bank*, 61 N. Y., 497. The surplus money took the place of the real estate, and the plaintiff's lien was transferred to that. He could not sell it under his judgment, but he had the right to have it applied upon his judgment, and such application took the place of and was in lieu of a sale of the real estate. The deficiency was thus ascertained, and we cannot hold that a court of equity could not, in such a case, give a personal judgment for the deficiency without going against the prevailing practice under the general rule above referred to, without unnecessarily shortening the arm of equity and sacrificing substance for mere form. The plaintiff properly obtained his equitable judgment, and as a part of the relief to which he is entitled, to do complete justice between the parties, he should have the deficiency judgment which he asks.

The order of the General Term should be reversed and that of the special term affirmed, with costs in this court and the supreme court.

All concur.

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Law Blanks at The Law Reporter.

**Supreme Court of the District of Columbia.
IN GENERAL TERM.**

**THE UNITED STATES, EX REL.
ELIZABETH TRASK,
v.
JOHN WANNAMAKER, Post-
MASTER GENERAL.**

1. Section 8 of the Act of Congress of June 12, 1866 (14 Stat., p. 60) merely defines the occasion which shall make imperative a readjustment of the salary to be paid to a postmaster of the third, fourth or fifth class after that date.
2. From that time the occasion for readjustment was to be the ascertained fact that the salary for the biennial term just ended had been 10 per cent. less than compensation by commissions would have been.
3. In the absence of clear indications to the contrary, every statute is prospective, and this amendment shows as little indication of a contrary intent as did the section which it amended.
4. This act was passed nearly three weeks before the biennial readjustment of June 30 was to be made. It determined, therefore the occasion, the state of facts, which should require a readjustment of salary for the biennial term from June 30, 1866, to June 30, 1868, and for succeeding biennial terms. The basis of readjustment remained meantime just what it had been before.
5. The Act of 1866 was a strictly prospective statute, and had reference only to the salaries to be allowed to the incumbents of the several post-offices after that time. It did not intend to operate on salaries which had been allowed for terms which had expired.
6. The Act of Congress of March 3, 1883 (22 Stat., p. 457), for the first time, provided for readjustment of salaries for terms which had expired; and in this proceeding the cases of *late* as well as incumbent postmasters were to be included.
7. But the Act of March 3, 1883, refers only to a readjustment of salaries under the Act of 1866. It was not intended to operate upon a salary for any biennial term not included in the operation of the Act of 1866.
8. The Act of 1883 did not propose to alter the scope of the Act of 1866; it proposed only to enforce its application to salaries which had not theretofore been adjusted. It follows that salaries for the term from June 30, 1864, to June 30, 1866, could not be readjusted under this statute

At Law. No. 33,047. Mandamus. Decided Oct. 24, 1882.

Mr. HARVEY SPALDING for petitioner.

Mr. C. C. COLE for Postmaster General.

Mr. Justice JAMES delivered the opinion of the Court:

This is a petition for a writ of mandamus. The relator's petition states substantially the following case:

She became postmaster at Emporia, Kansas, on October 1, 1864, and so continued to and including June 30, 1870. During the whole of the biennial term ending June 30, 1866, the returns of the office paid to the United States amounted to \$1,567.98, the commissions on which, under the Act of June 22, 1854, if allowed, would have amounted to \$863.99. The salary allowed

for the seven quarters of this period, during which the relator was postmaster, was \$580.

During the biennial term ending June 30, 1868, the returns of the office amounted to \$2,230.73, besides \$73 box rents, commissions upon which, under the said Act of 1854, if allowed, would amount to \$1,270.37, while relator was paid a salary, for the same period, of \$800.

For the biennial term ending June 30, 1870, the returns of the office amounted to \$6,312.53, besides \$230 box rents, upon which commissions under said Act of 1854, if allowed, would amount to \$3,139.33; while the relator was paid a salary, for the same biennial term, of \$1,580.

The petitioner thereupon claims that it became the duty of the Postmaster General, under section 8 of the Act of June 12, 1866, to readjust said salary at the end of each biennial term, because the same was ten per cent. less than it would have been in commissions under said Act of 1854, and to allow the difference between the salary paid and said commissions.

The relator further sets forth that, on June 9, 1883, and February 17, 1884, the Postmasters General of those dates issued orders in which they construed the statutes relating to readjustment of salaries; that they caused to be entered upon the forms described in those orders, the sum of \$1,567.98, as the amount of the postal receipts at the relator's postoffice during the biennial term ending June 30, 1866, and the salary of said office, for the whole of said term, computed on the basis of the Act of 1854, as \$863.99, and the relator's proportion thereof, for seven quarters of that term, as \$755.99; that they caused to be entered on said forms the sum of \$2,230.73, as the amount of relator's postal receipts for the biennial term ending June 30, 1868, and the sum of \$1,270.37, as relator's salary for the same term; and the sum of \$6,312.53 as the amount of relator's postal receipts for the biennial term ending June 30, 1870, and the sum of \$3,139.33, as the salary of the relator for the same term; also that the Postmaster General prepared and transmitted to the Committee on Post Offices and Post Roads a statement of the total amount of the relator's readjusted salary, due and unpaid, for the whole time between October 1, 1864, and June 30, 1870, showing the amount so due the relator to be \$2,175.57, but afterwards withdrew that statement, and an error therein was corrected, and an entry was made showing the correct amount due the relator to be \$2,206.19.

The relator states that the Postmaster General has refused to report to the auditor for the Post Office Department, for credit in the rela-

tor's account, the amount found due upon said statement, and concludes with the following prayer:

"The relator therefore prays that a writ of mandamus may issue from this honorable court addressed to John Wannamaker, Postmaster General, commanding him to report to the Auditor of the Treasury for the Post Office Department, that upon an examination of the relator's quarterly returns as postmaster at Emporia, Kansas, during her terms of service between October 1, 1864, and June 30, 1870, and a recomputation of her salary as required by section 8 of the Act of June 12, 1866, and the Act of March 3, 1883, it is found that the additional salary \$2,206.19 is due her, of which she is entitled to be credited in her account."

To this petition the respondent demurred. The case was certified to this court, to be heard here in the first instance, and a rule to show cause was issued.

In order to determine the validity of the relator's claim, we must consider the Acts of June 22, 1854, of July 1, 1864, of June 12, 1866, and of March 3, 1883.

The Act of June 22, 1854, provided that postmasters should be compensated by commissions on the amount of postal receipts at their respective postoffices, varying in percentage according to the extent of the receipts. The Act of July 1, 1864, established five classes of postmasters. To the first class were assigned those whose salaries, as determined by the rule laid down in another part of the act, should be not less than \$3,000 nor more than \$4,000; to the second those whose salaries should be not less than \$2,000 nor more than \$3,000; to the third, those whose salaries should be not less than \$1,000 nor more than \$2,000; to the fourth, those whose salaries should be not less than \$100 nor more than \$1,000; and to the fifth, those whose salaries should be less than \$100. The rule by which the salary of a particular postmaster should be determined was provided as follows: "To offices of the first, second, and third classes shall be assigned salaries, in even hundreds of dollars, as near as practicable in amount the same as, but not exceeding the average compensation of the postmasters thereof for the two years next preceding; and the offices of the fourth class shall be assigned severally salaries, in even tens of dollars, as near as practicable in amount the same as, but not exceeding, such average compensation for the two years next preceding," etc.

The time when the salary system shall take effect was provided by the 3d section of the

act as follows: "Salaries of the first, second, and third classes should be adjusted to take effect on the first day of July, 1864, and of the fourth and fifth classes at the same time, or at the commencement of a quarter as nearly as practicable thereafter."

The next preceding section (2) provided the readjustment of salaries in the following words:

"The Postmaster General shall review once in two years and in special cases, upon satisfactory representation, as much oftener as he may deem expedient, and readjust, *on the basis of the preceding section* (namely, Sec. 1) the salary assigned by him to any office; but any change made in such salary *shall not take effect until the first day of the quarter next following such order*, and all orders made assigning or changing salaries shall be made in writing and in his journal and notified to the Auditor of the Post Office Department."

The effect of sections 2 and 3 was that the biennial terms should date from July 1, 1864. By this reference to "the basis of the preceding section," (namely, section 2) it was required that the readjusted salary should be "as near as practicable in amount the same as, but not exceeding," the average compensation, by commission on postal receipts, for the two years next preceding the order of readjustment. For example, in case of readjustment of the salary which had been allowed for the term ending June 30, 1868, the postal receipts for that term would be the basis of computation, and then the salary so ascertained would, as provided by section 2, apply to the term ending June 30, 1868.

We come now to the statute on which chiefly the relator's claim is founded by her. Section 8 of the Act of June 12, 1866, enacted that the second section of the Act of 1864 should be amended by adding the following words: "Provided, that when the quarterly returns of any postmaster of the third, fourth, or fifth class show that the salary allowed is 10 per centum less than it would be on a basis of commission under the Act of 1854, fixing compensation, the Postmaster General shall review and readjust under the provisions of said section." This, of course, meant the provisions of section 2 of the Act of July 1, 1864, which referred to section 1 of the same act.

The relator construes this amendment as intending that, whenever a deficiency of 10 per cent. is found to have occurred in an allowance of salary, that deficiency shall be made up to him as further compensation for the past biennial term in which the deficiency was developed. Her petition contains the following allegation,

or rather claim: "That it became the duty of the Postmaster General, under section 8, Act June 12, 1866, to readjust said salary at the end of each biennial term, because the said salary was 10 per cent. less than it would have been under said Act of 1854, *and to allow her the difference between the salary paid and said commissions.*" We understand the relator's contention to be, that this process of supplying the deficiency is to be applied to the biennial terms from June 30, 1864, to June 30, 1870.

We do not so construe the Act of 1866. We hold that it merely defines the occasion which shall make imperative a readjustment of the salary to be paid after that date. From that time the occasion for readjustment was to be the ascertained fact that the salary for the biennial term just ended had been 10 per cent. less than compensation by commissions would have been. In the absence of clear indications to the contrary, every statute is prospective, and this amendment shows as little indication of a contrary intent as did the section which it amended. It is to be observed that this act was passed nearly three weeks before the biennial readjustment of June 30 was to be made. It determined, therefore, the occasion, the state of facts, which should require a readjustment of salary for the biennial term from June 30, 1866, to June 30, 1868, and for succeeding biennial terms. The basis of readjustment remained meantime just what it had been before. In express terms the Act of 1866 declared that the readjustment, in these cases of 10 per cent. of difference between the allowed salary and the commissions standard, should be made under the provisions of section 2 of the Act of July 1, 1864; and one of those provisions was, that the readjustment should apply only to the salary for the term next following the order of readjustment. The only effect, therefore, of the amendment was to determine the occasion or state of facts which should justify any readjustment. The important point, however, is, that the Act of 1866, was a strictly prospective statute, and had reference only to the salaries to be allowed to the incumbents of the several postoffices after that time. It did not intend to operate on salaries which had been allowed for terms which had expired.

We have next to consider the effect of the Act of March 3, 1883. That statute was in the following words: "That the Postmaster-General be, and he is hereby, authorized and directed to readjust the salaries of all postmasters and *late postmasters* of the third, fourth and fifth classes under the classification provided in the Act of

July 1, 1864, whose salaries have not heretofore been readjusted under the terms of section 8 of the Act of June 12, 1866, who made sworn returns of receipts and business for readjustment of salary to the Postmaster-General, the First Assistant Postmaster-General, or the Third Assistant Postmaster-General, or who made quarterly returns in conformity to the then existing laws and regulations, showing that the salary allowed was 10 per centum less than it would have been upon the basis of commissions under the Act of 1854; such readjustment to be made in accordance with the mode presented in section 8 of the Act of June 12, 1866, and to date from the beginning of the quarter succeeding that in which such sworn returns of receipts and business returns were made."

In this statute Congress, for the first time, provided for readjustment of salaries for terms which had expired; and in this proceeding the cases of *late* as well as incumbent postmasters were to be included. But it is to be observed that this act refers only to a readjustment of salaries under the Act of 1866. We think it is clear that it was not intended to operate upon a salary for any biennial term not included in the operation of that act; and we have already held that the Act of 1866 was only prospective. The Act of 1883 did not propose to alter the scope of the Act of 1866; it proposed only to enforce its application to salaries which had not heretofore been readjusted. It follows that salaries for the term from June 30, 1864, to June 30, 1866, could not be readjusted under this statute.

The prayer, therefore, for a writ commanding the Postmaster-General, "upon an examination of the relator's returns *during her terms of service between October 1, 1864, and June 30, 1870*, to report to the Auditor of the Treasury for the Post Office Department that it is found that the additional salary \$2,206.29 is due her, for which she is entitled to be credited in her account," cannot be granted.

Some other questions were discussed at the argument, but it is unnecessary to decide them on this demurrer.

The writ is denied.

RES INDICATA—Corporations.—In an action to recover an assessment on the stock of a corporation, a decision that the cause of action was barred by limitation is no bar to a subsequent action between the same parties to cover a subsequent assessment. *Priest v. Glenn*, U. S. C. C. of App., 51 Fed. Rep., 405.

Brief Printing—“Law Reporter Print.”

THE COURTS.

Supreme Court of the District of Columbia.

IN EQUITY.—New Suits.

October 17th, 1892.

14266. A. G. Cook and F. H. Melick, partners under the firm name of Cook & Melick, v. Martin N. Evans. Defts sol., S. S. Henkel.

14267. Turner H. Dickson v. May M. Dickson. For divorce. Com. sol., H. W. Garnett.

14268. Simon Gugenheim v. Jno. M. Langston et al. For conveyance. Com. sol., C. F. Benjamin; Defts sols., F. H. Mackey and C. A. Elliott.

October 18.

14269. Morris Murphy v. Thos. Kirby. For an accounting. Com. sol., W. Willoughby; Defts. sols., Cook & Sutherland.

14270. Augusta Brandenriff v. Elizabeth Cullen et vir. For injunction. Com. sols., A. A. Hoehling and Shellabarger & Wilson.

14271. F. G. Posey et al v. Mary Queen et al. For account and partition. Com. sols., H. J. Leach, F. H. Mackey and A. A. Hoehling.

October 19.

14272. E. Allen. Alleged lunatic. Upon petition of Commissioners D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazleton.

14273. R. E. Williams, alleged lunatic. Upon petition of Commissioners D. C. De lunatico inquirendo. Com. sol., George C. Hazleton.

14274. Julia A. Fairbank. Alleged lunatic. Upon petition Commissioners D. C. De lunatico inquirendo. Com. sol., George C. Hazleton.

14275. Walter H. Anderson v. Florence J. Anderson. For divorce.

14276. Jas. A. Meeser v. Arden Messer. For divorce. Com. sol., W. Twombly.

October 20.

14277. Jno. T. Donaldson v. Virginia Mason et al. To establish title. Com. sols., Ralston & Siddons.

14278. The Gottschalk Company of Baltimore, Md., v. Ann Dunn et al. To subject equitable interests in Lots 9, 10, 11, 12, Square 350, and other property, to pay judgment at Law No. 32728. Com. sol., S. T. Thomas.

14279. A. C. Clark v. Margaret C. M. Thompson et al. For partition. Com. sols., W. B. Todd and D. W. Baker.

October 22.

14280. Jno. O. Cole v. Chas. T. Hayenner. For account and receiver. Com. sol., Jno. Ridout.

14281. C. H. Bond v. Guy R. and Jos. J. Kennedy, infants. For release. Com. sol., J. J. Johnson.

14282. Emma H. Fitch v. Sanford E. Fitch. For divorce. Com. sol., C. A. Brandenburg.

14283. Jno. Orme Cole v. R. L. Coleman et al. To sell real estate. Com. sol., Jno. Ridout.

14284. John H. Walter, surviving trustee, v. Carrie E. T. Knox et al. To sell real estate. Com. sol., John Ridout.

Legal Notices.

FIRST INSERTION.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

This 2d day of November, 1892.

Thomas H. G. Todd v. The Unknown Heirs of Luke Wheeler, and The Unknown Heirs of	John Cowper. Equity. No. 14,253.
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On motion of J. J. Johnson and William B. Todd, solicitors for the complainant, it is ordered that the defendants, the unknown heirs of Luke Wheeler and the unknown heirs of John Cowper, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to enforce the execution of a conveyance by the said defendants to the complainant of part of subdivision, lot No. 31, in square No. 455, beginning for the same at the northwest corner of said lot 31; thence south 17 ft., 3 $\frac{1}{2}$ inches; thence east 48 ft., 3 inches; thence north 17 ft., 3 $\frac{1}{2}$ inches; thence west 48 ft., 3 inches to the place of beginning.

A. C. BRADLEY, Justice.

J. R. Young, Clerk.

By M. A. Clancy, Asst. Clerk.

44 [Filed November 2, 1892. J. R. Young, Clerk.]

This is to Give Notice

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of ANDERSON ARNOT, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of November, 1892.

AMERICAN SECURITY AND TRUST COMPANY,

44 By JOHN RIDOUT, Trust Officer.

This is to Give Notice

That the subscriber, of Washington, D. C., hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of MICHAEL P. CALLAN, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of July, 1893, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of November, 1892.

THOS. H. CALLAN,

44 No. 5086. Ad. D. 18. 472 La. Ave.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 20th day of October, 1892.

Margurite Kuder v. Louis F. Kuder, No. 14,201. Equity Doc. 34.

On motion of the plaintiff, by Messrs. Alex. H. Bell and John Mawdsley, her solicitors, it is ordered that the defendant, LOUIS F. KUDER, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is divorce from the bond of marriage with said defendant, and the ground therefor as alleged by the bill herein filed is desertion for a period of over two years.

By the Court. A. C. BRADLEY, Justice, &c.

44 A true copy. Test : J. R. Young, Clerk, &c.

This is to Give Notice

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of WILLIAM H. CLAGETT, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 28th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of October, 1892.

ADELE CLAGETT,

44 Howard C. Clagett, Proctor. No. 1006 16th St., nw.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

Catharine Jordan
v.
Cassarue Jordan,
alias John Jordan. } No. 14,171. Equity Doc. 34.

On motion of the petitioner, by Messrs. Nauck & Nauck, her solicitors, it is on this 28th day of October, A. D., 1892, ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

Provided this order be published once a week for three successive weeks in The Washington Law Reporter before said rule-day.

The object of this suit is to obtain an absolute divorce from the defendant upon the ground of desertion and abandonment.

True copy. Test: A. C. BRADLEY, Justice.
44 J. R. Young, Clerk.
By M. A. Clancy, Asst. Clerk.
[Filed October 28, 1892. J. R. Young, Clerk.]

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of EMMA M. COMBS, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 29th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of October, 1892.
JOSE M. YZNAGA,
44 Nathaniel Wilson, Proctor. May Building, City.

This is to Give Notice

That the subscriber, of Washington, D. C., hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, letters testamentary on the personal estate of CHARLES D. COLEMAN, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of May, 1893, [1892] next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of October, 1892.
ANNA M. COLEMAN, Executrix.
44 No. 1311 R. I. Ave.

This is to Give Notice

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of JOHN O'NEAL, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of October, 1892.
ELLEN O'NEAL,
44 Hugh T. Taggart, Proctor. 3600 M st., Geotwn., D. C.

This is to Give Notice

That the subscriber, of Washington, D. C., has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of W. BROWN CUERY, late of Washington, District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 28th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of October, 1892.
A. A. HOEHLING, Jr.
44 1416 F st., nw.

Legal Notices**This is to Give Notice**

That the subscriber, of New York City, N. Y., hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of CAROLINE H. SHEARMAN, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of October, 1892.

WILLIAM H. HIGBEE.
Care WARD THORON,

44 Ward Thoron, Proctor. 1505 Pa. Ave.

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of JOHN ADAMS, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of October, 1892.

HANNAH ADAMS,
44 Geo. F. Williams, Proctor. 114 11th st., se.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 81st day of October, 1892.

v.
Edward T. Mathews, } No. 14,114. Equity. Doc. 34.
trustee, et al.

On motion of the plaintiff, by Mr. James Hoban, her solicitor, it is ordered that the defendants, Rachel B. Mathews, widow, Charles S. Mathews, Minnie M. Mathews, his wife, Charles W. Hayes, Sophia S. Chappell, William Chappell, her husband, Louisa C. Polk, Trustee Polk, her husband, Eliza A. Mathews, widow, Charles A. Mathews, Mary D. M. Mathews, his wife, Andrew S. Mathews, William B. Mathews, George W. Mathews, Abbie C. Mathews, his wife, Mary C. Mathews, widow, Laura Mandeville, Henry C. Mandeville, her husband, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to have complainant's title to the part of lot three (3), in square numbered four hundred and eighty-eight (488), described in the fourth paragraph of her bill filed in this cause, adjudged and decreed by the court, to be a fee simple title and so made of record, and that the said Edward T. Mathews and John Ridout, trustees, defendants, and the other defendants hereto, their agents and attorneys, and all other persons in their behalf, may be perpetually enjoined from claiming the said property against complainant, or in any manner interfering with the said complainant, in her full enjoyment of her said fee-simple title in the same.

This order to be published once a week for three weeks in The Evening Star and as well in the Washington Law Reporter.

By the Court. A. C. BRADLEY, Justice, &c.
True copy. Test: J. R. Young, Clerk.
44 By M. A. Clancy, Asst. Clerk.
[Filed October 31, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Anne Faina } No. 14,188. Equity. Doc. 34.
v.
Nalle Faina.

On motion of the petitioner, by Messrs. Nauck & Nauck, her solicitors, it is on this 28th day of October, A. D. 1892, ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

Provided a copy of this order be published once a week for three successive weeks in the Washington Law Reporter before said rule-day.

The object of this suit is to obtain an absolute divorce from the defendant upon the ground of desertion and abandonment.

A. C. BRADLEY, Justice.
True copy. Test: J. R. Young, Clerk.
44 By M. A. Clancy, Asst. Clerk.
[Filed October 28, 1892. J. R. Young, Clerk.]

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,**
Holding a Special Term for Orphans' Court Business,
November, 4, 1892.

In the case of Wilbur J. Allen, executor of CATHERINE NIEDFELDT, deceased, the executor aforesaid has, with the approval of the court, appointed Friday, the 2d day of December, A. D. 1892, at 11 o'clock, a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the executor will take the benefit of the law against them.

Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: L. P. WRIGHT, Reg. of Wills, D. C.
44 No. 4,593. James Coleman, Proctor.

SECOND INSERTION.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,**
Holding a Special Term for Orphans' Court Business,
October 26th, 1892.

In the case of William H. Barstow, administrator of JOHN BRIEN, deceased, the administrator aforesaid has, with the approval of the court, appointed Friday, the 25th day of November, A. D. 1892, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the administrator will take the benefit of the law against them.

Provided, a copy of this order be published once a week for three weeks in the "Washington Law Reporter" previous to the said day.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
43 No. 4522. Ad. D. 17. John Ridout, Proctor.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of JOHN H. RUSSELL, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of October, 1892.
D. C. GOODALE, Admir.
1335 E St., n. w.

McDonald, Bright & Fay, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

Holding an Equity Court

the 25th day of October, A. D. 1892.

Zadok T. Galt, Surviving Trustee, &c., Plaintiff, v. George M. Robeson, Surviving Administrator et al.,
Defendants.

No. 11,718. Equity Docket 29.

On motion of Mr. Blair Lee, solicitor for the Children's Hospital, the complainant in a cross-bill filed in the above entitled cause, it is ordered that the following named defendants to said cross-bill, namely: George M. Robeson, surviving administrator of the estate of J. Wylie Aulick, Francis F. Conover, Richard F. Conover, Sophia S. Conover, Rachel W. Baker, Helen Louise Morris, Henry J. Carnes, John Carnes, Julia M. Stout, Mary A. Stout, Mary L. Leland, Richmond O. Aulick, certain unknown heirs of Henry J. Miller, and other unknown next of kin of the late Cornelia A. Dikeman, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of said cross-bill is to construe the last will and testament of the late Cornelia A. Dikeman, deceased, to state the account of Zadok T. Galt, surviving trustee of her estate and to obtain a decree in favor of the complainant in said cross-bill for its proportionate share of the residuum of said estate.

A true copy. Test:
A. C. BRADLEY, Justice.
J. R. Young, Clerk.
By M. A. Clancy, Asst. Clerk.

Legal Notices.**This is to Give Notice**

That the subscriber, of the New York City hath obtained from the Supreme Court of the District of Columbia holding a special term for Orphans' Court business, letters testamentary on the personal estate of FRANK FORSTER alias CLEMENT STROBL, late of the United States Army, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 22d day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of October, 1892.

WILLIAM Q. JUDGE,
Executor of Estate of Frank Forster alias Clement Strobl,
144 Madison Ave., N. Y. City.
43 J. Guilford White, Proctor, 919 F St., n. w.

This is to Give Notice

That the subscriber, of District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of LINDEN KENT, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of October 1892.

JAMES LOWNDES,
43 Ward Thoron, Proctor. 1505 Pa. Ave.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

Holding a Special Term for Orphans' Court Business.

October 24th, 1892.

In the case of Alfred G. Gross, administrator of the estate of CORDELIA SKIDMORE, deceased, the administrator aforesaid has, with the approval of the court, appointed Friday, the 18th day of November, A. D. 1892, at 2 o'clock p. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares or a residue, are hereby notified to attend or by agent or attorney duly authorized, in person with their claims against the estate properly vouched; otherwise the administrator will take the benefit of the law against them.

Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
43 No. 4108. Ad. D. 18. E. A. Newman, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

Holding an Equity Court

the 20th day of October, A. D. 1892.

Zadok T. Galt, Surviving Trustee, &c., Plaintiff, v. George M. Robeson, Surviving Administrator, et al., Defendants.

No. 11,718. Equity Docket 29.

On motion of Mr. Woodbury Blair, solicitor for the Domestic and Foreign Missionary Society of the Protestant Episcopal Church of the United States, the complainant in a cross-bill filed in the above entitled cause, it is ordered that the following named defendants to said cross-bill, namely: George M. Robeson, surviving administrator of the estate of J. Wylie Aulick, Francis F. Conover, Richard F. Conover, Sophia S. Conover, Rachel W. Baker, Helen Louise Morris, Henry J. Carnes, John Carnes, Julia M. Stout, Mary A. Stout, Mary L. Leland, Richmond O. Aulick, certain unknown heirs of Henry J. Miller, and other unknown next of kin of the late Cornelia A. Dikeman, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of said cross-bill is to construe the last will and testament of the late Cornelia A. Dikeman, deceased, to state the account of Zadok T. Galt, surviving trustee of her estate and to obtain a decree in favor of the complainant in said cross-bill for its proportionate share of the residuum of said estate.

A. C. BRADLEY, Justice.
J. R. Young, Clerk.
By M. A. Clancy, Asst. Clerk.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

Holding an Equity Court

the 20th day of October, A. D. 1892.

Zadok T. Galt, Surviving Trustee, &c., Plaintiff, v. George M. Robeson, Surviving Administrator, et al., Defendant.

No. 11,718. Equity Docket 29.

On motion of Mr. Woodbury Blair, solicitor for the Evangelical Educational Society of the Protestant Episcopal Church, the complainant in a cross-bill filed in the above entitled cause, it is ordered that the following named defendants to said cross-bill, namely: George M. Robeson, surviving administrator of the estate of J. Wylie Aulick, Francis F. Conover, Richard F. Conover, Sophia S. Conover, Rachel W. Baker, Helen Louise Morris, Henry J. Carnes, John Carnes, Julia M. Stout, Mary A. Stout, Mary M. Leland, Richmond O. Aulick, certain unknown heirs of Henry J. Miller, and other unknown next of kin of the late Cornelia A. Dikeman, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of said cross-bill is to construe the last will and testament of the late Cornelia A. Dikeman, deceased, to state the account of Zadok T. Galt, surviving trustee of her estate and to obtain a decree in favor of the complainant in said cross-bill for its proportionate share of the residuum of said estate.

True copy. Test: **A. C. BRADLEY, Justice.**
43 **J. R. Young, Clerk.**
By M. A. Clancy, Asst. Clerk.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration c. t. a. on the personal estate of **HARRIET W. SHACKLETT**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of October, 1892.
RALEIGH SHERMAN,
43 P. E. Dye, Proctor. 514 11th St., n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration, d. b. n. on the personal estate of **WARNER SMITH**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of October, 1892.
WILLIAM H. LEE,
43 W. K. Duhamel, Proctor. No. 18 C St., n. w.

THIRD INSERTION.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,**

Holding a Special Term for Orphans' Court Business.

October, 15th, 1892.

In the case of Henry A. Griswold and Charles Hayes, executors of ARTHUR CHRISTIE, deceased, the executors aforesaid have, with the approval of the court, appointed Friday, the 18th day of November, A. D. 1892, at 11 o'clock p. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the executors will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: **L. P. WRIGHT,**
Register of Wills for the District of Columbia.
42 No. 4538. Edwards & Barnard, Proctors.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,****Alexander Morris, Guardian,**

v.

{ In Equity. o. 18,678.

Morris S. Smith et al.

Jesse H. Wilson and John Ridout, trustees, having reported the sale of lot 60 in Wm. Radin, trustee's subdivision of part of square 182 as per plat recorded in liber W. F., folio 70 in the surveyor's office of the District of Columbia, to Mr. George F. T. Cook for \$2.66 per square foot, aggregating the sum of \$5,247.51.

It is, this 13th day of October, 1892, ordered, on motion of complainant's solicitors, that said sale be finally confirmed on the 13th day of November, 1892, unless cause to the contrary be shown before said day. Provided a copy of this order be inserted in the three successive issues of the Washington Law Reporter published next after the date of this order.

A true copy. Test: **A. C. BRADLEY, Justice.**
42 **J. R. Young, Clerk.**
By M. A. Clancy, Asst. Clerk.
[Filed October 13th, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 12th day of October, 1892.

Elizabeth Cullinan v. **No. 14,075. Equity.**
Edward T. Mathews et al.

On motion of the complainant by Messrs. Edwards & Barnard, her solicitors, it is ordered that the defendants, Rachel B. Mathews, Charles S. Mathews, Minnie M. Mathews, Charles W. Hayes, Sophia S. Chappell, William Chappell, Louisa C. Polk, Trusten Polk, Eliza A. Mathews, Charles A. Mathews, Mary D. W. Mathews, Andrew S. Mathews, William B. Mathews, George W. Mathews, Abbie C. Mathews, Mary O. Mathews, Laura Mandeville and Henry C. Mandeville, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to establish the complainant's title of record to the north 30 feet front on 6th street, by the depth of 42 feet, of lot numbered three (3) in square numbered four hundred and eighty-eight (488), in Washington City, D. C., and to enjoin defendants from claiming any title to the same adversely to complainant.

By the Court: **A. C. BRADLEY, Justice, &c.**
True copy. Test: **J. R. Young, Clerk, &c.**
42 By M. A. Clancy, Asst. Clerk.
[Filed October 12th, 1892. J. R. Young, Clerk.]

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court Business, letters of administration on the personal estate of **GEORGE P. TENNEY**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of October, 1892.
JAMES G. JESTER,
42 J. Walter Cooksey, Proctor. 639 F St. n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

Holding a Special Term for Orphans' Court Business.

This 14th of October, 1892.

In re estate of **ELIZA ANN SMITH**, late of the District of Columbia. No. 5231. Administration Doc. 18.

Application having been made for the probate of a paper-writing propounded as the last will and testament, and for letters testamentary on the estate of said Eliza Ann Smith, deceased, by Edwin A. Goodwin, of said District.

Notice is hereby given to all concerned to appear in this Court on the 11th day of November, 1892, at 1 o'clock p. m., to show cause if any exist against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter once in each of three successive weeks before said day.

By the Court: **A. C. BRADLEY, Justice.**
A true copy. Teste: **L. P. Wright, Reg. of Wills, D. C.**
42 Samuel Maddox, Proctor for applicant.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphan's Court business, letters of administration on the personal estate of JAMES T. CLOTWORTHY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of October, 1892.

JAMES CLOTWORTHY,

42 E. H. Thomas, Proctor. 1148 7th St. n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

the 18th day of October, 1892.

Thomas Hardy, J. Francis Hardy, Mary D. Hardy, Augustus W. Smith and Elizabeth H. Smith, his wife, vs. Cephas Hardy and Amanda Hardy, his wife.

No. 14,168. Equity Docket 34.

On motion of the plaintiffs, by Mr. R. B. C. Chew their solicitor, it is ordered that the defendants, Cephas Hardy and Amanda Hardy, his wife, non-residents, and returned not found, be notified by publication to cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to procure a decree for the sale of certain real estate of which John Hardy, late of Montgomery County, Maryland, died, seized and possessed, described in the said bill as situated in the District of Columbia, north of square No. 855.

By the Court.

A. C. BRADLEY, Justice, &c.

True copy. Test: J. R. Young, Clerk, &c.
42 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Elizabeth C. Robey et al. v. { No. 13,868. Equity Docket 33.

Owen Robey et al.

Marion Dorian and John H. Adriants, the trustees in the above entitled cause, having reported to the court that they have sold the real estate in these proceedings mentioned, being lots 84 and 85 of Bates and Callaghan's subdivision of lots 25, 26, section 3, Barry Farm, to Randall Johnson for four hundred and fifty-five (456) dollars and twenty-five (25) cents.

It is, by the court, this 17th day of October, 1892, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown on or before thirty days from the date hereof.

Provided a copy of this be published in the Washington Law Reporter for the successive weeks prior to the expiration of said thirty days.

A true Copy. Test:

A. C. BRADLEY, Justice.

42 By M. A. Clancy, Asst. Clerk.
[Filed October 17th, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 12th day of October, 1892.

Barbara T. Juenemann v. { No. 14,108. Equity.

Edward T. Mathews et al.

On motion of the complainant, by Messrs. Edwards & Barnard, her solicitors, it is ordered that the defendants, Rachel B. Mathews, Charles S. Mathews, Minnie M. Mathews, Charles W. Hayes, Sophia S. Chappell, William Chappell, Louisa C. Polk, Trusten Polk, Eliza A. Mathews, Charles A. Mathews, Mary D. W. Mathews, Andrew S. Mathews, William B. Mathews, George W. Mathews, Abbie C. Mathews, Mary C. Mathews, Laura Mandeville and Henry C. Mandeville, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to establish the complainant's title of record to part of lot three (3) in square numbered four hundred and eighty-eight (488) in the City of Washington, D. C., contained within the following metes and bounds: beginning for the same at a point on north E street, 24 feet 4 inches east of the southwest corner of said lot, and running thence north 45 feet; thence east 18 feet; thence south 45 feet, and thence west 18 feet to the place of beginning; and to enjoin defendants from claiming any title to the same adverse to complainant.

By the Court:

A. C. BRADLEY, Justice, &c.

True copy. Test: J. R. Young, Clerk, &c.
42 By M. A. Clancy, Asst. Clerk.
[Filed October 12, 1892. J. R. Young, Clerk.]

Legal Notices**This is to Give Notice**

That the subscriber of New York City, hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters ancillary on the personal estate of WILLIAM J. FLOR-ENCE, late of New York City, New York, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, at the office of Carusi & Miller, 486 La. Ave. on or before the 15th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of October, 1892.

ANNIE T. FLORENCE,

42 Care of Carusi & Miller, Attorneys, 486 La. Ave.

This is to Give Notice

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration c. t. a. on the personal estate of JOHN LYNCH, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of October, 1892.

FRANK T. BROWNING,

Atty. at Law.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 12th day of October, 1892.

George J. Seufferle v. { No. 14,085. Equity.

Edward T. Mathews et al.)

On motion of the complainant, by Messrs. Edwards & Barnard, his solicitors, it is ordered that the defendants, Rachel B. Mathews, Charles S. Mathews, Minnie M. Mathews, Charles W. Hayes, Sophia S. Chappell, William Chappell, Louisa C. Polk, Trusten Polk, Eliza A. Mathews, Charles A. Mathews, Mary D. W. Mathews, Andrew S. Mathews, William B. Mathews, George W. Mathews, Abbie C. Mathews, Mary C. Mathews, Laura Mandeville and Henry C. Mandeville, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to establish the complainant's title of record to the east 20 feet front on E street, and running back the same width, 75 feet to the rear line of said lot, of lot numbered three (3) in square numbered four hundred and eighty-eight (488), in Washington City, D. C., and to enjoin defendants from claiming any title to the same adversely to complainant.

By the Court.

A. C. BRADLEY, Justice, &c.

True copy. Test: J. R. Young, Clerk, &c.

42 By M. A. Clancy, Asst. Clerk.
[Filed October 12th, 1892. J. R. Young, Clerk.]

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of CHARLES E. BLUNT, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of October, 1892.

EVELINA BLUNT,

1720 Mass. Ave.

42 Joseph K. McCammon, James H. Hayden, Proctors.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of JOSEPH A. SMITH, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of October, 1892.

GEO. H. B. WHITE,

Or. E. L. WHITE,

Pacific Building.

The Washington Law Reporter.

ESTABLISHED 1874.

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[WEEKLY]

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WASHINGTON, D. C., - - - NOVEMBER 10, 1892

Supreme Court of the District of Columbia.

IN GENERAL TERM.

LINDA HOLLADAY, BEN CAMPBELL
HOLLADAY, INFANTS, ETC.

v.

TOWERS, MIDDLETON ET AL.

It is perfectly competent for a party, so far as creditors are concerned, to give money to his wife, unless the transfer is made in pursuance of some scheme to prevent creditors from collecting their legal demands, or unless he is shown to have been actually insolvent at the time of the gift.

In Equity. No. 10,491. Decided June 8, 1892.

Messrs. ELLIS, JOHNS & MCKNIGHT for complainants.

Mr. NATHANIEL WILSON for defendants.

The CHIEF JUSTICE delivered the opinion of the Court:

The original plaintiffs below, Esther Holladay and her husband, Ben Holladay, having died during the pendency of the suit, it was revived in the names of Linda Holladay and Ben Campbell Holladay, the infant children and sole devisees and legatees of all the real and personal estate of Mrs. Esther Holladay, and they were made complainants in the bill as such. Rufus Ingalls, the executor of Mrs. Holladay, and Joseph Holladay, executor of Ben Holladay, were also made parties plaintiff.

The bill alleges that on July 5, 1879, Esther Holladay the mother of the infant complainants, was seized in fee, as her separate property, of a certain lot in the city of Washington, and that on that day she made her promissory note, bearing interest at 7 per cent., payable semi-annually, three years after date, and at the same time also a deed of trust, her husband, Ben Holladay, executing it with her, to secure the note. This deed of trust was in the usual

form and recited that Esther Holladay owed H. C. Towers \$5,000, and to secure the payment of that sum, she conveyed the title to the property to Samuel E. Middleton and D. W. Middleton, as trustees. Esther Holladay never owed Towers, who was a clerk in Middleton & Company's bank, the beneficiary in the deed, anything. Her husband, Ben Holladay, was a customer of Middleton & Co., bankers, the trustees, named in the deed composing that firm, and the note and deed were made by her to secure Middleton & Company the repayment of any advance made to said plaintiff's husband, Ben Holladay, by said Middleton & Company, bankers, in their line of business with him as a customer, as by over-checking and overdrawing his account with them as bankers, for a definite period, and delivered to that firm, and that in so doing she merely bound herself and her said property as surety for such advance for a definite period, and is entitled to all the rights and privileges of a surety.

By the eighth paragraph of the bill it is said that when the note fell due July 8, 1882, no attempt was ever made by Middleton & Company, or any one else, to enforce the collection thereof, in any way, and that if the note "is in existence, the note and the indebtedness secured thereby is barred and extinguished by the Statute of Limitations and the lapse of time."

The bill further states that on the 31st day of May, 1884, Middleton & Company failed and assigned all their assets to George F. Green, and in July, 1884, this court appointed Frank Morey, receiver, who qualified at once. Between July 8, 1882, when the note matured, and May 31, 1884, when Middleton & Company failed, almost three years had elapsed, and any indebtedness of her husband, if he owed the firm anything at either of the above dates, was barred by lapse of time and the Statute of Limitations, and that owing to the laches and neglect of the owners of any such claim, if any such existed against Ben Holladay, they have lost their remedy.

The eleventh paragraph claims that in consequence of such neglect, laches and delay by which all remedy against Ben Holladay has been lost, she, Esther Holladay, having been merely such surety for her husband, is released from any indebtedness arising out of her executing the deed, and that she owes nothing thereon to said firm, their assignee or to said receiver.

In paragraph 12 she says that "she is entitled

to have said note, on which there is nothing now due, delivered up to her, if the same be now in existence, by said Middleton & Company."

She specially prays that she be released from all obligation on the note and deed and that the court will decree a release of the deed, and a reconveyance to her by the proper party. There is also a prayer for general relief.

The defendant Towers answers and admits that Esther Holladay was on July 5, 1879, seized in fee, as her separate estate, of the lot, and made the note and deed on that day; that at that date he was a clerk in Middleton & Company's bank; that Mrs. Holladay never owed him anything; that the note and deed were executed and delivered as stated in the bill, and for the purpose alleged; he does not know whether any attempts were ever made to enforce their collection; he does not know what has become of the note, nor if it is in existence; that upon the execution of the note, he, Towers, indorsed it, and that he never has seen it since, nor ever heard of it until the bringing of this suit. Towers admits the failure and assignment of Middleton & Company, and disclaims all right, title and interest in and to the note, and to the lot.

The defendant Daniel W. Middleton, in his answer under oath, admits the averments in the bill, as to the fact of Mrs. Holladay being seized in fee of the property, but charges that her husband, Ben Holladay, paid for it out of his money, and denies that she paid for it out of her own separate property; he admits that Mrs. Holladay did not owe Towers anything, and that her husband, Ben Holladay, was a customer of the bank. He swears positively that he "is not informed and does not know of the purpose of the said Esther in executing said note and deed." On information and belief he denies "that said note and deed of trust were delivered to the said Middleton & Company by the said Esther." On information and belief, he denies that in making the note and deed, Mrs. Holladay merely bound herself as surety for a definite period for advances and loans to her husband by his firm. He admits that the note fell due July 8, 1882, and that nobody has ever made any attempt to collect it or to enforce the deed, and denies that the note and the indebtedness secured by it is barred by the Statute of Limitations or lapse of time. He admits the averments of the bill as to failure, and so forth, of his firm, and that almost three years have elapsed since the maturity of the note and failure of the firm, and that Ben Holladay's debt

was an open account. He neither admits or denies the averments as to the laches charged in the bill. He denies that the debt of Ben Holladay to the firm, in consequence of the laches charged in the bill, has been released or extinguished, or that Mrs. Holladay is released from liability on the note or deed of trust. He says, that it appears from the books of Middleton & Company, that on July 5, 1879, Ben Holladay owed that firm, for overdrafts, \$847.75; that on July 30, 1879, Holladay delivered the note and deed to his firm, at which date he owed them \$2,068.58, as shown by their books, on open account for overdrafts. He avers that the note and deed were made payable to Towers, and were delivered to his firm by Ben Holladay "and was transferred, indorsed and delivered to his firm to hold and to enable them to obtain payment of said indebtedness of said Ben Holladay and of such indebtedness as he, the said Ben Holladay, might afterwards incur to" his firm; that from July 30th, 1879, Ben Holladay's debt to the firm never diminished, but gradually increased, and at their failure there was \$22,150.10 due the firm "as appears from the books of said firm." He avers that his firm held possession of the note and deed, and the latter at Ben Holladay's special request was not reported, but that said Esther and Ben Holladay having executed a deed of trust of the lot to Frank T. Rawlings and Charles B. Maury, to secure a loan of \$5,000 made by the Arlington Fire Insurance Company, which said last mentioned deed was recorded on the 2d day of May, 1880, their firm put the deed to them on record May 3d, 1880, and that by the said act of Ben and Esther Holladay, their firm became second and postponed to the deed to the Arlington Insurance Company. He avers that the note to the insurance company not having been paid at maturity, the trustees, Rawlings and Maury, sold the lot and that there now remains in Rawlings and Maury's hands as trustees \$3,641.48, which he claims is justly applicable to the payment of the note to H. C. Towers, dated July 5, 1879. He avers that his firm held the latter note till their failure, and then delivered it to George F. Green, and before their failure frequent demands had been made on Ben Holladay to pay the firm his indebtedness mentioned.

The separate answer of Samuel E. Middleton is identical with that of Daniel W. Middleton.

Green's answer is also the same as that of the Middletons up to the 13th paragraph, and then he states that it appears from the books of Middleton & Company that on the date of Mrs.

Holladay's note, July 5, 1879, Ben Holladay owed the firm \$1,147.57; that the note and deed were delivered to Middleton & Company by Ben Holladay, July 30, 1879, at which date he owed the firm \$2,691.40; that said note and deed of trust were made payable to Towers and was indorsed by him before the same was delivered to Middleton & Company, by Ben Holladay, and was transferred, indorsed and delivered to the firm to enable them to obtain payment of said indebtedness of said Ben Holladay, and of such indebtedness as he might afterwards incur; and he swears when the firm failed Ben Holladay owed it \$20,579.46.

He filed with his answer a copy of the account of the trustees, Rawlings and Maury, showing they had on the sale of the lot and payment of the note to the company a balance of \$3,641.48. He swears that he has had the note in his possession ever since his appointment as receiver. He says that on July 5th, 1879, the date of the note, Ben Holladay was insolvent, and has ever since been so, and has no property subject to execution.

The issue which is thus presented by the pleadings I have stated fully, because of the peculiar manner in which it seems to be necessary to dispose of this case. It is evident that the grounds upon which the complainants claim the testimony entitles them to relief is somewhat obscurely developed by the pleadings. It is claimed on behalf of the complainants that the testimony of Mrs. Holladay, which was taken before her decease, proves that the note and deed of trust, which it is said in the answer of Middleton, was executed by Holladay and wife for the benefit of the Arlington Insurance Company for \$5,000, was executed by her, as she says, for the purpose of raising money to extinguish the indebtedness evidenced by the deed of trust which had been executed by her in favor of the Middletons, and she swears positively that the check of the Arlington Insurance Company for \$5,000 was given to her as the proceeds of the discount of her note, which check was delivered by her to Middleton & Co. as and for the full payment of the amount of her note, which she had previously executed to Towers for the benefit of Middleton & Co., and that thereby, as she testifies, the debt evidenced by virtue of this deed of trust, and by the note that was executed to Towers, was extinguished. There is no testimony to rebut this, unless it be the statement made by D. W. Middleton in his testimony. He testifies to the receipt of this check of the Arlington Insurance Company for \$5,000; admits that it was received

on the 3d day of May, 1880, by Middleton & Company; admits that it was held until the 30th day of June following before any credit was entered upon the books to anybody, and then, he says, that in pursuance of a request of Mrs. Holladay, it was put into the account of Ben Holladay, but it was never entered to the credit of Mrs. Holladay.

In the examination in chief of D. W. Middleton he was asked the direct question, what conversation, if any, he ever had with Mrs. Holladay respecting the application of this check of the Arlington Insurance Company, to which he answers "never a word;" yet, in direct contradiction to this he says, as though a matter of his own knowledge, that the proceeds of this check were placed to the credit of Ben Holladay's account at the request of Mrs. Holladay. We think the testimony of Middleton, contradicted as he is by himself, as to his having had the opportunity of knowing that Mrs. Holladay ever made such a request, cannot be relied on to overcome the positive testimony of Mrs. Holladay. Besides he is directly and unqualifiedly impeached by the testimony of two very respectable citizens of Washington, and no one appears to support his character for truth and veracity. Mrs. Holladay is unimpeached, and we think her testimony is consistent with and sustained by the facts otherwise shown as to the application of this check. It is a suspicious circumstance that this check should have been given and handed into Middleton & Company's bank on the 3d day of May, 1880, and that no application whatever should have been made of it until nearly sixty days thereafter.

Mrs. Holladay states that she never authorized the application of the check to the account of her husband.

Now, why, if her purpose and object was to have this second five thousand dollars also applied to the benefit of her husband and to extend his credit at the bank, was it not at once placed to the credit of Holladay? Such is the usual practice and custom of banks; no bank doing a legitimate business, would permit a security of that kind to be in their bank without their books showing for what purpose it was there and without placing it to the credit of the party entitled to it. There is no explanation made whatever by the Middletons, or by any one, as a reason for this delay, except the suggestion that there was some purpose or plan agreed upon between the Middletons and Ben Holladay, without the knowledge or authority of Mrs. Holladay. This, if true, could not bind Mrs. Holladay, or any one claiming under her.

It was suggested in argument that these parties being creditors of Holladay, and it being really his money, they could apply it where it properly belonged; but the testimony shows that in 1874, Holladay gave to his wife certain stocks and bonds; that she held the same for a considerable time, and finally disposed of them for the sum of \$80,000, and that she subsequently applied a portion of the \$80,000 to the purchase of the premises upon which said deeds were placed. The proof shows, by the testimony of several reputable witnesses, who say that they knew Holladay at and before the year 1874, that he was a man in possession of a large amount of property and money, with excellent credit, and was generally understood to be a rich man. The proof shows that for years after the gift of these stocks and bonds to his wife Holladay continued to do a large business and was in the possession of considerable property and handled large sums of money.

It is perfectly competent for a party, so far as creditors are concerned, to give money to his wife, unless the transfer is made, and shown to have been made, in pursuance of some scheme inaugurated for the fraudulent purpose of preventing creditors from collecting their legal demands or unless he be shown to be actually insolvent at the time of making the gift. It *prima facie* appears, that at the time that he gave these stocks to his wife, in 1874, he was perfectly solvent and there was no equitable right in the Middletons or any of the creditors of Holladay to claim any part of the fund growing out of the sale of these stocks, either directly or indirectly, for the payment of their debts.

The decree of the court below, dismissing the bill will be reversed, and a decree entered that the money in the hands of Rawlings and Maury as trustees be paid to the complainants.

MCKENZIE v. UNDERWOOD.

A rehearing is denied where the vital points in the case have been carefully considered by the court upon the original hearing.

In Equity. No. 10,165. Decided October 24, 1892.

The CHIEF JUSTICE and Justices HAGNER and JAMES sitting.

Messrs. H. O. and R. CLAUGHTON for plaintiff.

Messrs. J. AMBLER SMITH and COLE & COLE for defendant.

Mr. Justice JAMES delivered the opinion of the Court:

There is a motion for a rehearing in the case of *McKenzie v. Underwood*. In the reported opinion, only one of three or four points involved in the case was really discussed or positively decided.

Other points, however, were involved in the determination of the case and were considered and decided. One of them was that the fund which the petition proposed to reach, as the property of Judge Underwood in the hands of his administratrix, never formed a part of his estate, but consisted of an appropriation for the benefit of his wife after his death.

It is immaterial whether we were right or wrong on the point discussed in the opinion. In any case that fund could not be reached.

It is suggested in the petition for rehearing that the case was hastily decided by the court. It was carefully considered.

The decree which we reversed held the defendant, who was an administratrix, personally liable. Of course that was incorrect if the assumption of the decree that she held the property in question as administratrix of the estate of John Underwood was wrong.

The rehearing, therefore, is denied, and the motion is overruled.

C. & F. BOULTER v. BENDIZA J.

BEHREND.

At Law. No. 32,284.

JAMES ROBERTSON v. BENDIZA

J. BEHREND.

At Law. No. 32,300.

SAMUEL WHITTLE v. BENDIZA

J. BEHREND.

At Law. No. 32,301.

THOMPSON, FOUST & CO. v. BENDIZA

J. BEHREND.

- Where the affidavit of the plaintiff or his agent contains only a general statement that he is justly entitled to recover a certain sum, and there is no distinct statement of what the cause of action is, nor of the real facts upon which that cause of action is based; and only an indefinite statement that the defendant has removed some property from the jurisdiction of the court for the purpose of having it sold at auction—the affidavit is so uncertain as to time, quantity, and surrounding circumstances, as to render it of scarcely any value.
- Where the question has been decided, and maintained for more than twelve years as the law of the court, without any question, the court regards it as a duty to follow such decision.

At Law. Decided May 31, 1892.

Messrs. CHAPIN BROWN and MILLS DEAN for plaintiffs.

Mr. LEON TOBRINGER for defendant.

The CHIEF JUSTICE delivered the opinion of the Court:

The declaration in each case shows the action to be on the common counts. The particulars

of demand attached to each of the declarations are verified under the 73d Rule. Proceedings were commenced in each of the cases for the issuing of a writ of attachment, affidavits by the plaintiffs or their agents, with supporting affidavits in each instance having been filed. The defendant in each of the cases filed a motion to quash the proceedings in attachment upon the ground of the insufficiency of the affidavits. The question involved here is not a new one. It was decided by this court more than twelve years since in the case of *Newman v. Hexter, MacA. & M.*, p. 88. Mr. Justice Cox delivered the opinion of the court and the matters contained in both the principal and the supporting affidavits in that case were substantially the same as in the cases at bar. There was a failure to set forth in the principal affidavit distinctly the grounds of the action. The statement was that the plaintiff was justly entitled to recover the sum named in the declaration, except in one of the cases, the statement was a little more distinct, but not sufficiently so to comply with the law as it was held to be in that case. We find the same condition of things in these cases: a simple general statement in the affidavit of the plaintiff or his agent that he is justly entitled to recover a certain sum. There is no distinct statement of the cause of action nor of the real facts upon which the cause of action is based. There is very little that is distinct in the way of testimony in relation to the grounds for the attachment. There is an indefinite statement that the defendant in each case has removed some property at some time previous to the filing of the affidavit from the jurisdiction of this court for the purpose of having it sold at auction. That is so indefinite as to time, as to quantity and as to the surrounding circumstances as to make it, in the way of testimony, of scarcely any value whatever. So far as the supporting affidavits are concerned, there is nothing in the way of testimony in any of them to support the facts constituting the cause of action of the plaintiffs, and the statements of the grounds for the attachments are not the same as the statements in the principle affidavit in each case.

The arguments addressed to us in support of this motion are arguments arraigning the decision of this court in *Newman v. Hexter*.

If this were an original question, and if the practice of the court had not been regarded as settled, as we understand it has been since the decision in *Newman v. Hexter*, we should have regarded the argument of counsel for the plaintiff as entitled to serious consideration; but we

regard it as our duty under the circumstances, the question having been decided and maintained for more than twelve years as the law of this court, without any question so far as we can ascertain, up to this time, to follow *Newman v. Hexter*.

We may add that in a case decided in March, 1891, by the General Term—the case of *Hoover & Snyder v. Soule*—the ruling of the court in *Newman v. Hexter* was followed.

The General Term has consistently followed this ruling since 1879.

Mr. Justice BRADLEY: It seems to me that the principle has been so long absolutely settled by *Newman v. Hexter*, that the construction of the statute by the court on that occasion has become the equivalent of a legislative declaration, and that it cannot be changed unless it be by an Act of Congress.

IN RE MICHAEL L. SULLIVAN.

1. Section 1, article 16, of the police regulations of the District of Columbia, which imposes a penalty for selling intoxicating liquors without license, is not authorized by Section 2 of the Joint Resolution of Congress, approved February 26, 1892 (27 Stat., page 394) nor by the Act of Congress approved January 26, 1887, (24 Stat., page 388,) empowering the commissioners to make police regulations.
2. The words in said section 2, "in addition to those already made," under the act of January 26, 1887, necessarily mean those already made in accordance with said act, so that reference is actually made to the provisions of the act itself.
3. All of the regulations which the statute authorizes relate either to life, limb, health, comfort or quiet, and the reference thereto in the joint resolution has the effect to illustrate what is meant in the resolution by regulations for the protection of "lives, limbs, health, comfort and quiet."
4. The commissioners would seem to be authorized to prohibit certain acts or conduct by whomsoever done, because they would endanger life or limb, or health, or comfort, or quiet; and on the same grounds to regulate the manner in which acts not prohibited shall be done. For illustration, they would be authorized to forbid the keeping open of any bar-rooms after certain hours of the night, or to regulate the manner in which they should be conducted while open, and to impose proper penalties for the violation of such regulations.
5. It is to what in contemplation of law is a matter which by its own operation, may affect life, limb, health, comfort or quiet that the authority of the commissions is strictly limited.
6. In determining the question whether such a regulation (section 1, of article 16, of the police regulations) was authorized, the court cannot hold that the failure to obtain a license is an act which in itself is capable of affecting health, or quiet, or comfort.
7. So long as licenses for engaging in this kind of business are required, it is to be greatly regretted that adequate penalties have not been provided for those who carry it on in defiance of law.

8. The mischief done by these unlicensed places, the corruption which they breed, the crimes which they cause, can hardly be estimated. The calendars of our courts are black with their results. The seat of government of a decent and law-abiding people is disfigured and made disgusting by evils which, if not cured, could be diminished by legislation.
9. It is with profound regret that the court must hold the well-intended regulation of the commissioners to be invalid. The petitioner, who is held in custody under it, must be discharged.

Habeas Corpus. No. 193. Decided October 31, 1892.
The CHIEF JUSTICE and Justices HAGNER and JAMES
sitting.

Mr. LEON TOBRINER for petitioner.
Messrs. GEORGE C. HAZELTON and S. T. THOMAS for respondents.

Mr. Justice JAMES delivered the opinion of the Court:

This is a petition for a writ of habeas corpus. It states that on the 29th of September, 1892, the petitioner was tried in the Police Court of the District of Columbia on an information charging that he "did engage in keeping a bar room or tippling house where distilled or fermented liquors, wines or cordials were sold without them and there having a license for that purpose, contrary to and in violation of section 1, article 16, of the Police Regulations of the District of Columbia," and on the day and year aforesaid, after a trial by jury, was adjudged guilty of said charge and was sentenced to pay a fine of \$100 and costs, and, in default thereof, to be committed to the workhouse of said District for the term of ninety days, and that thereupon he was, on the 13th day of September, 1892, in default of the payment of said fine and costs under the judgment, aforesaid committed into the custody of the intendant of the Washington work house of the District of Columbia, and is now in the custody of the said intendant. The petitioner avers that section 1 of article 16 of the police regulations under which he was prosecuted, convicted and committed is without authority of law and invalid, and that the Police Court was without jurisdiction to proceed against him for any alleged violation of said section.

A certified record of the proceedings of the Police Court is annexed as a part of the petition. From this it appears that the petitioner as defendant in the Police Court filed a motion to quash the information, and a motion in arrest of judgment, but afterwards withdrew all motions in the case, and submitted himself for sentence.

The respondent sets forth in his answer as the cause of the petitioner's detention the proceedings in the Police Court.

The police regulation on which the information in this case was founded is in the following words: "Section 1. No restaurant, bar room, sample room or tippling house where distilled or fermented liquors, wines or cordials are sold shall be kept in the District of Columbia without a license therefor first had and obtained in accordance with the provisions of existing law and the following regulations. And any person violating the provision of this section shall on conviction, be punished by a fine of not less than \$100 nor more than \$250 for each and every offense, and in default of payment of such fine,

such person shall be committed to the work house of the city of Washington, in said District, for a period of not less than three nor more than eleven months."

The Commissioners of the District claim that authority to enact this regulation was conferred upon them by a "joint resolution to regulate licenses to proprietors of theaters in the city of Washington * * * and for other purposes," passed by Congress February 26, 1892, which was in the following words: "Section 1. That all licensees issued by the Commissioners of the District of Columbia to proprietors of theaters or other public places of amusement in the city of Washington, District of Columbia, and now in force be, and the same are hereby, terminated, unless the persons holding such licenses shall within ten days after due notice comply with such regulations as may be prescribed for the public safety by the Commissioners of the District of Columbia.

"Section 2. That the Commissioners of the District of Columbia are hereby authorized and empowered to make and enforce all such reasonable and usual police regulations in addition to those already made under the Act of January 26, 1887, as they may deem necessary for the protection of lives, limbs, health, comfort and quiet of all persons and the protection of all property within the District of Columbia."

It has been assumed by the Commissioners that this grant included power to prohibit not the keeping of any bar room, but the keeping of a bar room without license, and to enforce such prohibition by fine and imprisonment.

In the construction of this grant of power the first question is whether it is affected by the reference to the Act of January 26, 1887. We think, in the first place, that the words "in addition to those already made," under that act, necessarily mean "those already made in accordance with," &c., so that reference is actually made to the provisions of the act itself. In the next place, we must hold that this description of the regulations yet to be made as being "in addition" to those already authorized must have been intended to have some effect, and we think they would be inoperative unless they contemplated an extension of the class of regulations already authorized. It is necessary, therefore, to consider the Act of January 26, 1887. It enacted as follows:

"That the Commissioners of the District of Columbia are hereby authorized and empowered to make, modify and enforce usual and reasonable police regulations in and for said District as follows:

"First. For causing full inspection to be made at any reasonable times of the places wherein the business of pawnbroking, junk dealing or second-hand clothing business may be carried on.

"Second. To regulate the storage of highly inflammable substances in the thickly populated portions of the District.

"Third. To locate the places where licensed vendors on streets and public places shall stand and change them as often as the public interests require, and to make all the necessary regulations governing their conduct on streets in relation to such business.

"Fourth. To make needful regulations for

the orderly disposition of carriages or other vehicles assembled on streets or public places and to require vehicles upon such streets and avenues, as they may deem necessary, to pass along the right side thereof.

"Fifth. To establish and regulate the charge to be made by owners of hacks and hackney carriages of any kind whatever.

"Sixth. To prohibit conducting droves of animals upon such streets and avenues as they may deem necessary to public safety and good order.

"Seventh. To regulate the keeping and running at large of dogs and fowls.

"Eighth. To prohibit the deposit upon streets or sidewalks of fruit or any part thereof or other substances or articles that might litter the same or cause injury to or impede pedestrians.

"Ninth. To regulate or prohibit loud noises with horns, gongs or other instruments or loud cries upon the streets or public places, and to prohibit the use of any fireworks or explosives within such portions of the District as they may think necessary to public safety.

"Tenth. To regulate the movements of vehicles on the public streets or avenues for the preservation of order and protection of life and limb."

We have quoted these provisions at length because all of the regulations which they authorize relate to either life, limb, health, comfort or quiet and because the reference to them in the joint resolution has the effect to make them illustrations of what is meant in that resolution by regulations for the protection of "lives, limbs, health, comfort and quiet."

In the light of these illustrations the Commissioners would seem to be authorized to prohibit certain acts or conduct, by whomsoever done, because they would endanger life or limb or health or comfort or quiet, and on the same grounds to regulate the manner in which acts not prohibited shall be done. For example, they would be authorized to forbid the keeping open of any bar room after certain hours of the night, or to regulate the manner in which they should be conducted while open, and to impose proper penalties for the violation of such regulations. Both of these are matters in which public comfort or quiet or health may be concerned. But it is to matters which, by their own operation, may affect life, limb, health, comfort or quiet that this authority is strictly limited. It is with acts and conduct which, by whomsoever done, tend in themselves to impair one of these public interests that the Commissioners are authorized to deal. Therefore, before it can be held that the keeping of a bar room without license is a subject which falls within this power it must appear that such a bar room, although conducted in precisely the same manner with those that are licensed, is, by reason of its want of license, distinguishable from the latter as to its effect on health or public comfort or quiet. That it is thus distinguishable even if it be conducted in the most orderly and wholesome manner is necessarily assumed by this regulation. This is the basis of the regulation, but in its actual form this basis is substantially ignored. In terms it provides simply a penalty for disregarding the license law and evading the license tax.

We cannot hold that the failure to obtain a license is an act which in itself is capable of affecting health or quiet or comfort. Undoubtedly a business which is carried on in defiance of law is likely to be carried on in an improper manner, but it is not at these improprieties that this regulation is aimed. As we have said, it deals only with the impropriety of carrying on this business at all, and in any manner, without first obtaining a license to do so.

So long as licenses for engaging in this kind of business are required it is to be greatly regretted that adequate penalties have not been provided for those who carry it on in defiance of law. It is known to this court judicially that what is begun in defiance of law is accompanied on all sides with such defiance. The mischief done by these unlicensed places, the corruption which they breed, the crimes which they cause, can hardly be estimated. The calendars of our courts are black with their results, but even these disclose only a part of it. The seat of government of a decent and law abiding people is disfigured and made disgusting by evils which, if not cured, could be diminished by legislation, and there is strong temptation to supply its absence by bold construction of law. But we are not allowed to cure unlawful conduct by assuming unlawful powers. Until this people shall give us power to cleanse their capital we can only suffer and be held responsible for evils we cannot cure.

It is with profound regret that we must hold the well intended regulation of the Commissioners to be invalid. *The petitioner, who is held in custody under it, must therefore be discharged.* An order will be made accordingly.

HENRY KRAAK v. EVA FRIES.

1. The verbal contract between the plaintiff and defendant for the sale of real estate was distinctly within the 4th paragraph of section 4 of the Statute of Frauds, and therefore was totally void.
2. The note of the defendant, which was given to secure the execution of the void agreement, was equally void, as without consideration.
3. A parol agreement collateral to a written contract concerning the sale of interests in lands, and not interfering with its terms, is not void under the statute.
4. The verbal contract was conditioned upon payment for the property on the 20th of March, and the plaintiff failed to make the payment at that time. This is an additional reason why the plaintiff cannot recover.

At Law. No. 27,775. Decided October 24, 1892.
The CHIEF JUSTICE and Justices HAGNER and JAMES sitting.

Mr. C. CARLISLE for plaintiff.

Mr. B. F. LEIGHTON for defendant.

Mr. Justice HAGNER delivered the opinion of the Court:

This is a suit at law by the plaintiff against the defendant, upon her note dated March 12, 1887, for \$100, payable on demand to the order of Henry Kraak, at the National Bank of Washington, with interest until paid.

The declaration is in the usual form.

The defendant pleaded general issue, and also a plea in set-off, which alleged the plaintiff was indebted to her in a like sum of \$100, which, in the particulars of defense, is described as a

check made by the defendant to the order of the plaintiff contemporaneously with the note, for that amount.

At the trial the plaintiff proved the note and rested. Thereupon the defendant testified that on the 12th day of March, 1887, the day the note was given, the plaintiff came to her and asked her to sell him her house and lot, and offered her therefor the sum of \$4,000; that she agreed to accept the offer; and it was then agreed between them that the sale should be consummated on or before the 20th day of March, 1887, and further that the plaintiff and defendant should each deposit with Charles A. James, the cashier of the National Bank of Washington, the sum of \$100, to be forfeited by either party who should fail to perform his part of the contract to the party able and willing to perform it on his or her part; that upon this agreement the defendant executed the note sued on, and the plaintiff executed his check for the sum of \$100, and both were then delivered to James, the cashier, to hold in escrow upon the conditions above mentioned; that the contract for the sale of the land was entirely in parol, the only papers signed being the note and the check, neither of which contained any reference to the contract.

The defendant further testified that the plaintiff did not perform his said oral agreement on the 20th day of March, 1887, but made default therein; but that afterwards, about the 29th day of March, the plaintiff offered to perform his contract by taking the real estate and paying the sum of \$4,000.

There the defendant rested.

The plaintiff then gave evidence tending to show that there was no time fixed for the performance of the contract except such as was necessary for an examination of the title; that on the 12th of March the plaintiff and defendant went to the Real Estate Title Company's office, and the plaintiff ordered an abstract of title, which the company agreed to furnish by the 20th of March; that the company did not furnish it until the 27th of March, and thereupon the plaintiff offered to comply with the terms of the agreement by offering on that day to pay for the property, but that the defendant refused to convey the land.

The only other evidence was that of Mr. James, who testified that when the papers were left with him, he heard nothing said with reference to the limitation to the 20th day of March as the date when the contract should be consummated.

Thereupon, upon application of the defendant, the court below directed the jury to find a verdict for the defendant.

The ground of the defense was that the note having been given only as a forfeit for the non-performance of a parol contract respecting the sale of land was, therefore, without consideration and incapable of sustaining a recovery.

The question has been very well argued by counsel on both sides, and being an interesting one, we have given it full attention.

As a matter of course, the verbal contract between the plaintiff and the defendant was distinctly within the 4th paragraph of the section 4, of the Statute of Frauds; and therefore was totally void and incapable of being en-

forced or taken cognizance of by any court except by decree for a specific performance upon such proof of part payment as is recognized as sufficient by a court of equity. The note of the defendant was, therefore, given to secure the execution of a void agreement—in other words of no agreement at all; and hence was equally void, as without consideration. We think this position is clear from a proper consideration of the authorities, notwithstanding its apparent conflict with some of those quoted by counsel for the plaintiff. In Browne on the Statute of Frauds, Sec. 134, in illustrating the results of the invalidity of parol contracts for the sale of land, the author says:

"This case, Carrington v. Root, 2 Mees. & Welsby, 248, affords a very clear exemplification of the general rule which may be here reasserted, that no action can be brought to charge the defendant in *any way* upon a verbal agreement not put in writing according to the statute. And it may be briefly illustrated further. If land be sold at auction or otherwise, and no memorandum made, and the purchaser refuses to take it, no action will lie against him to recover the loss sustained upon a second sale to another party; this could be done, manifestly, only upon the ground that he was originally legally liable to take and pay for the land himself. Nor will a discharge from performing a verbal contract within the statute be a sufficient consideration to support another engagement. No action whatever could have been maintained against the defendant for any breach of that contract. A discharge from it, therefore, is of no use to him. And upon exactly the same principle, an engagement to forfeit a certain sum of money, in case of failing to perform another engagement which, within the Statute of Frauds, could not itself be enforced, is not enforceable by the party to whom it is made."

"So where the defendant agreed to take up certain notes and receive a conveyance of land which a third party had verbally engaged to give, the defendant's promise was held void for want of consideration."

This is the principle decided in the case of Goodrich v. Nickols, 2 Root, Conn., 498, which seems to be directly applicable to the case under consideration.

To the same effect is the case of Rice v. Peet (15 Johnson, 502). There two parties agreed verbally to exchange their farms, and one of them delivered to the other a note which had been given to him by a third person to be forfeited in case he should not comply with the contract. He failed to comply; whereupon the other party went to the drawer of the note and collected the money. The plaintiff in the case thereupon brought suit for the money thus collected and it was held that he could recover the money. The court after examining other points said:

"There is another ground on which the plaintiff had good right to recover the money received by the defendant on that note. It was received by the defendant without consideration; the contract for the exchange of farms was void by the Statute of Frauds, being by parol only."

The case of Levy v. Brush, 45 N. Y., 589, is a very instructive one. Two parties agreed that

one of them should attend an auction and purchase a piece of land which was to be there offered for sale. The person who was to bid it off was to pay for it, and then it was to be held jointly for the two, and the second party was to reimburse the purchaser one-half the money so paid. At the auction he did buy the land, but signed no note of the purchase, and the auctioneer failed to make any memorandum of the transaction, so that the contract of sale was entirely verbal and void under the Statute of Frauds. The purchaser who had thus possessed himself of the land under this agreement refused to make good his contract with the other party, who filed a bill to compel him to receive one-half of the money and convey one-half of the land. The relief was refused upon the ground that the contract of sale of the land at the auction, in the absence of an agreement or memorandum or note thereof, was totally void under the Statute of Frauds and therefore the collateral agreement, so called, to divide the land when bought, was also void and could not be enforced. The court said (p. 594):

"If no valid contract for purchase had been made, the plaintiff would have had no remedy against the defendant, although the failure to make such contract was wholly from the default of the defendant. In other words, an action will not lie by one party against another for the breach of a verbal agreement to unite with him in the purchase of a designated piece of land, the title to be taken by them in common. No purchase having been made, such an agreement would come within the statute," &c.

Again, the court, replying to an argument advanced by counsel for the plaintiff, that the statute cannot be invoked as a shield to protect a party in the perpetration of a fraud, says :

"But no case can be found where a contract has been taken out of the statute in favor of a party who had no existing interest in the property, who had done no act of part performance, who had parted with nothing under the contract, simply upon the ground that the other party was guilty of a fraud in refusing to perform his verbal agreement. That is all there is of this case, except the offer of performance by the plaintiff. To hold that to be sufficient to take the case out of the statute, would repeat it. Care must be taken that this is not done, under an idea that as the statute was enacted to prevent fraud, it cannot be applied to cases where it appears that, in a moral sense, a party is attempting to perpetrate a fraud. A party, in no legal sense, commits a fraud by refusing to perform a contract void by its provisions. He has not, in that sense, made a contract, and has a perfect right, both at law and in equity, to refuse performance."

This case is cited with approbation by the Supreme Court in the case of *Howland v. Blake*, 97 U. S., 628.

The authorities cited by the plaintiff do not impugn this principle. It is true, a parol agreement collateral to a written contract concerning the sale of interests in lands, and not interfering with its terms, is not void under the statute. Such was the case of *Morgan v. Griffith*, L. R., 6 Exch., 70, where a landlord who had given a written lease afterwards agreed

with the tenant that he would keep down the rabbits that were overrunning the crops. Upon failure to do so, the tenant brought suit upon the collateral agreement, and it was held it might be established by parol.

This and a similar case, *Erskine v. Adeane*, 8 Chancery Appeals Cases, 756, and many others to the same effect, were relied on in the case of *Raub v. Barber*, 8 Mackey, 245, where it was decided that a lessee under a written lease which gave him power to assign his term, might be held answerable under a contemporaneous verbal promise to divide with the lessor whatever profits he might make by the assignment. But such recognized collateral verbal agreements presuppose the existence of valid existing contracts, to which they are supplementary. If the principal agreement is void and not capable of being enforced, it is not easy to see how a penalty can lawfully be enforced for its non-performance. If there are any cases apparently to the contrary, they must have been governed by some other principle.

An additional reason why the plaintiff could not recover is that the contract was conditional. Payment was to be made and deed given on the 20th of March, on which day the defendant was ready to comply with the terms of the contract; but the plaintiff failed to do so. The excuse that he offered to comply on the 27th or 29th of March, was no more a legal performance by him of his part of the agreement than an offer to do so on the 29th of April would have been.

We think the judgment below correct, and it is affirmed.

Supreme Court of the United States.

Decided October 31, 1892.

Charles C. Hubbard, Collector of Customs, &c., Plaintiff in Error, vs. Charles Soby.

In error to the Circuit Court of the United States for the District of Connecticut.

THE CHIEF JUSTICE: This was a suit brought October 9, 1890, in the Circuit Court of the United States for the District of Connecticut to recover an alleged excess of duties upon imports exacted by plaintiff in error in his capacity of collector of customs of the port of Hartford, prior to the going into effect of the act of Congress of June 10, 1890, entitled "An act to simplify the laws in relation to the collection of the revenues." (26 Stat., 131.) Judgment was given for defendant in error, February 27, 1892, and on June 11, 1892, the pending writ of error was sued out. The motion to dismiss the writ must be sustained upon the authority of *Lau Ow Bew v. United States*, 144 U. S., 47; *McLish v. Roff*, 141 U. S., 661.

Writ of error dismissed.

CONTRACTS.—Reformation of a contract for the sale or exchange of lands, and a specific performance of the contract so reformed, may be had in one and the same action. *Ham v. Johnson*, (Minn.) 52 N. W. Rep., 1080.

THE COURTS.

Supreme Court of the District of Columbia.

IN EQUITY.—New Suits.

October 23, 1892.

14285. Jno. H. Walter, surviving trustee, v. S. Bieber et ux. et al. To sell Lots 2 and 8, Square 982. Com. sol., Jno. Ridout.

14286. Jno. H. Walter, surviving trustee, v. S. Bieber, et ux., et al. To sell lot 18, square 1027. Com. sol., Jno. Ridout.

14287. Jno. H. Walter, unmarried, v. Ralph Walker et al. To sell lots 5-18, square 1017. Com. sol., Jno. Ridout.

14288. Elizabeth M. Whitlock v. Guy R. Kennedy et al. To sell real estate, part subplot 27, square 159.

October 24.

14289. Harry C. Michael v. Mamie R. Michael. For divorce. Com. sol., E. B. Hay.

14290. S. W. Curriden, guardian of Isabel Curriden, v. S. W. Curriden, Isabel Curriden and Moses Kelly. To sell real estate of infant ward. Com. sol., Irving Williamson.

14291. Jno. R. McLean et al. v. Hopkins Loudon. For an account. Com. sol., A. T. Britton.

October 25th, 1892.

14292. Kate H. Green v. George H. Green. For divorce. Com. sol., Jos. Shillington.

October 26.

14293. Marie Gebhard et al. To assign dower. Com. sol., Chase Roye.

October 27.

14294. Solomon Nalley v. Cora E. Nalley. For divorce. Com. sol., R. Christy.

14295. The Western National Bank v. Thos. W. Widdicombe et al. Creditors bill. Com. sols., Abert & Warner; Defts. sol., R. Hagner.

October 28.

14296. Mary B. Butler et al. v. Chas. Bradley et al. To sell for partition. Com. sols., Phillips and McKenney.

October 29.

14297. Elizabeth Atzell v. Elizabeth Schroth et al. Creditor's bill. Com. sols., H. F. Woodward and Wm. L. Elterich.

October 31.

14298. William Weinmann v. Lottie I. Weinmann. For divorce. Com. sol., Albert Sillers.

November 1.

14299. Allen C. Clark v. Mary V. Marriott et al. For partition. Com. sols., Riddle and Davis.

14300. Allen C. Clark v. Wm. F. Holtzman et al. For partition. Com. sols., Riddle and Davis.

November 2.

14301. R. F. Lukei v. D. W. Beach et al. For injunction. Com. sol., H. B. Moulton; Defts. sols., Cole & Cole and L. C. Williamson.

14302. The Associated Friends of Zion v. the Friends of Zion, No. 1, et al. For injunction. Com. sol., C. S. Bundy; Defts. sol., J. W. Cooksey.

November 3.
14303. Chas. Uppercue, alleged lunatic; upon petition Commissioners D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazelton.

14304. W. C. and Thos. W. Scott v. R. J. Murray et al. Judgment creditor's bill. Com. sol., J. Edgar Smith.

November 4.

14305. Wm. H. Hall, alleged lunatic; upon petition Commissioners D. C. De lunatico inquirendo. Com. sol., Geo. C. Hazelton.

14306. A. L. Case, alleged lunatic; upon petition of D. R. Case. De lunatico inquirendo. Com. sols., J. S. and E. S. McCalmont.

November 5.

14307. T. M. and A. Z. Tyssowski v. Henry Douglass et al. Com. sols., Geo. E. Hamilton and M. J. Colbert.

November 7.

14308. Thos. Kennedy v. J. Raedy et al. To divest and to vest title. Com. sol., J. J. Johnson.

14309. R. F. Dwyer v. S. Bensinger. To enforce mechanic's lien. Com. sol., F. T. Browning.

14310. Martha Reily v. Martin Altschuh. For specific performance of contract of purchase. Com. sol., J. N. Saunders.

14311. A. M. G. Gorton v. E. B. Hay et al. For injunction. Com. sol., A. B. Duvall.

AT LAW—New Suits.

October 8, 1892.

33358. Tina Spencer v. Henry Freeman. Dam. agas, \$3,000. Plffs. atty., C. Carrington.

33359. Bernhard Dasenbrock v. Ferdinand Ehrhardt. Appeal.

33360. Cleveland, Browne & Co. v. J. K. Strasburger. Account, \$195. Plffs. atty., R. H. Spencer.

33361. Mitchell & Reed v. Stephen Moffitt alias "Steve Morfit." Account, \$159. Plffs. atty., W. C. Clephane.

33362. The Western National Bank v. Jos. S. Boss et al. Note, \$452.15. Plffs. atty., C. A. Brandenburg.

33363. Martha McIntire, appellee, v. Jno. Myers, appellant. Appeal. Plffs. atty., E. A. McIntire.

October 10.

33364. Edwin H. Newmeyer v. Wm. Penn Clarke. Note, \$260.84. Plffs. attys., Padgett & Forrest.

33365. Thos. H. Williams v. Luke Voorhees. Wyoming judgment, \$3,063.21. Plffs. atty., West Steever.

33366. C. A. Keigwin v. Thos. H. Gardner. Note, \$310. Plffs. atty., F. T. Browning.

33367. C. M. Ness & Co. v. E. G. Wheeler. Note and account, \$174.57. Plffs. atty., H. W. Sohon.

33368. The State of North Carolina v. Samuel F. Phillips. Account, \$9,884.08. Plffs. atty., Enoch Totten.

33369. Scott & Bro. v. Robt. J. Murray. Note, \$135.33. Plffs. atty., J. Edgar Smith.

33370. Chas. Gans et al v. S. H. King. Acct. \$172.20. Plffs. atty., W. A. Johnston.

33371. Cumberland, Dugan & Co. v. Edward Warren et al. Note, \$132.45. Plffs. atty., W. A. Johnston. Defts. atty., Robinson White.

33372. E. R. Reynolds v. Henry E. Courtney. Acct., \$120.45. Plffs. atty., W. A. Johnston.

33373. Wood Bros. v. C. S. Gunn. Certiorari. Defts. atty., Henry M. Westfall.

33374. Padgett & Forest v. Cornelia Truesdell. Judgment of Harper, J. P. \$60.00. Plffs. attys. P. P.

33375. F. G. Posey et al v. Sarah A. White. Ejectment. Plffs. attys., H. J. Lauck and F. H. Mackey. Defts. attys., Morris & Hamilton.

33376. The Boston Wall Paper Co. v. W. J. Thorogood & Co. Note \$180.99. Plffs. atty., W. H. Sholes.

33377. Swartzmann & O'Conner v. E. G. Wheeler. Check and acct., \$33.81. Plffs. atty., Leon Tobriner.

33378. Geo. Killeen v. S. H. Price. Note, \$288. Plffs. attys., Mackall & Maedel.

33379. Buckeye Buggy Co. v. McCauley & Alexander. Note and acct., \$815. Plffs. attys., Abert & Warner.

33380. Heilner & Strauss v. Douglas & Bro. Acct., \$231.75. Plffs. attys., Abert & Warner.

33381. Van Dyke Knitting Co. v. A. Mayer. Acct., \$277. Plffs. attys., Abert & Warner.

33382. Deeble, Davis & Co. v. Wash. T. Nailor. Judgment of Taylor, J. P., \$52.75.

33383. Columbus Wire Co. v. E. G. Wheeler. Acct., \$117.40. Plffs. atty., R. H. Spencer.

33384. H. Schrider v. G. C. Esher. Acct., \$118.05.

33385. B. B. Earnshaw v. T. M. Broderick et al. Note, \$144.25. Plffs. atty., F. T. Browning.

33386. Mary A. Anderson v. Jas. Reeves. Replevin. Plffs. atty., J. J. Wilmarth. Defts. atty., E. M. Hewlett.

Rule of Court.

RULE 20. * * * * * *Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.*

Legal Notices.

FIRST INSERTION.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphan's Court business, letters testamentary on the personal estate of ERIC M. NOBLE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of October next; they may otherwise by law be excluded from all benefit of said estate.

Given under my hand this 25th day of October, 1892.

J. B. WIMER,
608 13th st. nw.

Legal Notices

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business.

This 4th of November, 1892.

In re estate of MARY A. McQUILLAN, late of the District of Columbia. No 5266. Administration Doc. 18.

Application having been made for the probate of a paper-writing propounded as the last will and testament and codicil, for letters testamentary on the estate of said Mary A. McQuillan, deceased, by Thomas H. Calan:

Notice is hereby given to all concerned to appear in this Court on Friday, December 9, 1892, at 11 o'clock, a. m., to show cause if any exist against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter, once in each of three successive weeks before said day.

By the Court: A. C. BRADLEY, Justice.
A true copy. Teste: L. P. Wright, Reg. of Wills, D. C.
45 John F. Ennis, Proctor for applicant.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
the 10th day of November, 1892.

John H Walker }
v. } Equity. No. 14,287.
Ralph Walker et al.

On motion of the complainant, by Mr John Ridout, his solicitor, it is ordered that the defendants, Ralph Walker, Emily M. Walker, Charles R. Walker, Catharine H. Dalziel, Elizabeth M. Dalziel, Fisher McPherson, James Chandler, Anne Chandler, Mary Daws, James Daws, Mary H. Walker, Dumrie Walker, Margaret R. Walker, Anne Edwards, Arthur W. Hewison, Lucy Hewison and Walford C. Locket, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a decree for sale, to make partition of lots numbered from five (5) to eighteen (18) both inclusive, in square numbered ten hundred and seventeen (1017) in the city of Washington, in the District of Columbia, of which George Walker died seized.

A. C. BRADLEY, Justice.
A true copy. Test: J. R. Young, Clerk.
By M. A. Clancy, Asst. Clerk.
45 [Filed November 10, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
the 10th day of November, 1892.

Elizabeth M. Whitlock }
v. } No. 14288. Eq. Docket 34.
Guy R. Kennedy et al.

On motion of complainant, by Mr. John Ridout, her solicitor, it is ordered that the defendants, Guy R. Kennedy, Joseph J. Kennedy, Annie E. Bidwell and John Bidwell, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain the appointment of a trustee vice Joseph C. G. Kennedy, deceased, under a Deed of Trust from Susan P. Okie, conveying part of lot 27 in square 159, according to Williams and Jardine's subdivision of said square in the city of Washington, District of Columbia, which deed of trust is recorded in Liber 1064, folio 188, of the land records of the District of Columbia.

By the Court: A. C. BRADLEY, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
45 By M. A. Clancy, Asst. Clerk.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of CHARLES E. DEVALIN, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of November, 1892.

45 GEORGE F. APPLEBY,
Fendall Building.

Any time you need anything printed The Law Reporter Co.'s Job Office is the place to have it done. Good work; quick work—that's what you get.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,**

John H. Adriams { No. 13,595. Equity. Doc. 33.
v.
Isaac S. Lyon, et al.

Jonathan G. Bigelow and Marion Dorian, the trustees in the above entitled cause, having reported to the court that they have sold the real estate in these proceedings mentioned, being all of lot numbered twenty-six (26) in section numbered eight (8) in the subdivision of St. Elizabeth known as Barry Farm, except that portion theretofore condemned as right of way for a railroad, to John H. Adriams for seven hundred and one (\$701.00) dollars, the said John H. Adriams having assigned his said bid to William F. Warriner and that the terms of sale have been complied with.

It is, by the Court, this 8th day of November, 1892, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown on or before thirty days from the date hereof.

Provided a copy of this order be published in the Washington Law Reporter for three successive weeks prior to the expiration of said thirty days.

A. C. BRADLEY, Justice.

A true copy. Test: J. R. Young, Clerk.
By M. A. Clancy, Asst. Clerk.
[Filed Nov. 8, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

November, 4th, 1892.

In the case of George J. Seufferle, administrator of SUSAN L. HALL, deceased, the administrator aforesaid has, with the approval of the court, appointed Friday, the 2nd day of December, A. D. 1892, at 11 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
45. No. 4641. Ad. D. 17. Edwards & Barnard, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

the 7th day of October, 1892.

Sarah A. Serrin et al. { No. 13,214. Equity Doc. 32.
v.
George T. Cumberland et al.

On motion of the plaintiffs, by Messrs. Edwards & Barnard, their solicitors, it is ordered that the defendant, MARGARET LUCAS, cause her appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause be proceeded with as in case of default.

The object of this suit is to sell part of lot 6, square 264, in Washington City, for the purpose of paying funeral bill of Elizabeth S. Cumberland, and for partition among devisees.

By the Court: A. C. BRADLEY, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.,
45 By M. A. Clancy, Asst. Clerk.
[Filed Nov. 7, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

the 4th day of November, 1892.

Mary Downs { Equity, No. 14,178.
v.
Margaret Downs and others.

On motion of the complainant, by Fillmore Beall, her attorney, it is ordered that the defendants, Patrick T. Downs, John Downs, Eugene Crimmin, Jeremiah Sullivan, Jeremiah Sullivan, Jr., Eugene Sullivan, Michael Sullivan and William Sullivan cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to procure a decree for the sale of the south 11 feet of lot 18 in square 453, by the depth of 75 feet of said lot, of which David Downs died seized and possessed, for the purposes of partition.

A. C. BRADLEY, Justice.
A true copy. Test: J. R. Young, Clerk,
45 By M. A. Clancy, Asst. Clerk.
[Filed Nov. 4, 1892. J. R. Young, Clerk.]

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,**
the 9th day of November, 1892.

John H. Walter, surviving trustee, { No. 14,285. Equity.
v.
Samuel Bisher et al.

On motion of the complainant, by Mr. John Ridout, his solicitor, it is ordered that the defendants, John C. Phillips, Anna M. Phillips, P. F. Phillips, John Holmead, E. A. Humphreys, Mary V. Marriott, William H. Marriott, Ruth H. Morrow, Jeremiah Morrow, Herod Osburn, Alverda Osburn, Grace Osburn, Mason Osburn, Decatur Osburn, Richard Osburn, Logan Osburn, Samuel W. Young, Ruth Rickey, L. J. Rickey, Sarah E. Steen, Joseph R. Steen, Libbie Smith, A. DeWitt Smith, Jane Campbell, James Campbell, and Elizabeth M. Young, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a decree for the sale, to make partition of original lots numbered two (2) and eight (8) in square numbered nine hundred and eighty-two (982) in the city of Washington, District of Columbia, of which John Young died seized.

A. C. BRADLEY, Justice.
A true copy. Test: J. R. Young, Clerk,
45 By M. A. Clancy, Asst. Clerk.
[Filed Nov. 9, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

the 9th day of November, 1892.

John H. Walter, surviving trustee, { No. 14,284. Equity.
v.
Carrie E. T. Knox et al.

On motion of complainant by Mr. John Ridout, his solicitor, it is ordered that the defendants, Carrie E. T. Knox, Corinne Lee Scott, James W. Scott, Julius F. Scott, Clara J. Scott, Leanna Scott, William Lee Scott, Mary Scott, Louisa Scott, Martha Scott, Mary V. Marriott, William H. Marriott, Ruth H. Morrow, Jeremiah Morrow, Herod Osburn, Alverda Osburn, Grace Osburn, Mason Osburn, Decatur Osburn, Richard Osburn, Logan Osburn, Samuel W. Young, Ruth Rickey, L. J. Rickey, Sarah E. Steen, Joseph R. Steen, Libbie Smith, A. DeWitt Smith, Jane Campbell, James Campbell, and Elizabeth M. Young, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a decree for the sale, to make partition of original lot eighteen (18) in square numbered ten hundred and twenty-seven (1027) in the city of Washington, District of Columbia, of which John Young died seized.

A. C. BRADLEY, Justice.
A true copy. Test: J. R. Young, Clerk,
45 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
the 8th day of November, 1892.

Jane A. Messer { No. 14,276. Docket 84.
v.
Andrew Messer.

On motion of the plaintiff, by Mr. William Twombly, her solicitor, it is this 8th day of November ordered that the defendant, ANDREW MESSEYER, cause his appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce from the bond of marriage, on the ground of willful desertion for the full and uninterrupted period of two years.

By the Court: A. C. BRADLEY, Justice, &c.
45 True Copy. Test: J. R. Young, Clerk, &c.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business.

This 8th of November, 1892.

In re estate of MINNIE B. HEARD, late of Washington, D. C. No. 5235. Administration Doc. 18.

Application having been made for the probate of a paper-writing propounded as a last will and testament, and for letters of administration c. t. a., on the estate of said Minnie B. Heard, deceased, by Irwin B. Linton:

Notice is hereby given to all concerned to appear in this Court on Friday, December 2, 1892, at 11 o'clock, a. m., to show cause if any exist against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter, once in each of three successive weeks before said day.

By the Court: A. C. BRADLEY, Justice.
Test: L. P. Wright, Register of Wills, D. C.
45 Irwin B. Linton, Proctor for applicant.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration c. t. a., on the personal estate of ANDREW FRANK HOFER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of October, 1892.

45 Julius A. Maedel, Proctor. JOHN G. REISINGER,
No. 235 G st., n.w.

This is to Give Notice

That the subscribers of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration, c. t. a., on the personal estate of EMILY W. FARQUHAR, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 1st day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 1st day of November, 1892.

C. M. & H. S. Mathews, SOPHIE S. KREIDLER,
Proctors. E. A. KREIDLER,
45 1012 12th st. n.w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphan's Court business, letters of administration on the personal estate of JOHN GILLIAT, late of Virginia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of November, 1892.

45 AMERICAN SECURITY AND TRUST COMPANY,
By JOHN RIDOUT, Trust Officer.

This is to Give Notice

That the subscriber, of Norristown, Pa., hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration c. t. a. on the personal estate of GEORGE THOMAS, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of October, 1892.

HENRY R. BROWN,
Care J. J. Wilmarth, Atty. at Law.
45 John J. Wilmarth, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
The 9th day of November, 1892.

Jeh H. Walter, Surviving Trustee
v.
Samuel Bieber et al.

On motion of the complainant, by Mr. John Ridout, his solicitor, it is ordered that the defendants, Corinne L. Scott, James W. Scott, Julius F. Scott, Clara J. Scott, Leanna Scott, William L. Scott, Mary Scott, Louisa Scott, Martha Scott, Mary V. Marriott, William H. Marriott, Ruth H. Morrow, Jeremiah Morrow, Herod Osburn, Alverda Osburn, Grace Osburn, Mason Osburn, Decatur Osburn, Richard Osburn, Logan Osburn, Samuel W. Young, Ruth Rickey, L. J. Rickey, Sarah E. Steen, Joseph R. Steen, Libbie Smith, A. DeWitt Smith, Jane Campbell, James Campbell and Elizabeth M. Young, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a decree of sale, to make partition of original lot numbered nineteen (19) in square numbered ten hundred and twenty-seven (1027) in the city of Washington, District of Columbia, of which John Young died seized.

A. C. BRADLEY, Justice.
A true copy. Test: J. R. Young, Clerk.
45 By M. A. Clancy, Asst. Clerk.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of HENRY HALL, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, at the office of Carns & Miller, 486 La. Ave., on or before the 5th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 5th day of November, 1892.

SARAH HALL,
Care Carns & Miller, 486 La. Ave.
45 Carns & Miller, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA
Holding a Special Term for Orphans' Court Business,

This 4th of November, 1892.

In re estate of ELISE KRAUCH late of Washington, D. C. No. 5248. Ad. D. 18.

Application having been made for the probate of a paper-writing propounded as the last will and testament, and for letters of administration with the will annexed on the estate of said Elise Krauch, deceased, by Theodore Christians.

Notice is hereby given to all concerned to appear in this court on Friday, Dec. 2d, 1892, at 11 o'clock a. m., to show cause, if any exist, against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter once a week in each of three successive weeks before said day.

By the Court: A. C. BRADLEY, Justice.
Test: L. P. WRIGHT, Reg. of Wills, D. C.
45 J. A. Maedel, Proctor for applicant.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA
the 8th day of November, 1892.

J. S. Eastby-Smith
v.
Theodore Olynthus Douglas. } No. 33,383. Law. Docket 87.

On motion of the plaintiff, by Mr. Tallmadge A. Lambert, his attorney, it is ordered that the defendant, THEODORE OLYNTUS DOUGLAS cause his appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to enforce payment of plaintiff's demand of \$75.00 now entered, etc. by attachment.

By the Court: A. C. BRADLEY, Justice, &c.
45 True copy. Test: J. R. Young, Clerk.
By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
the 8th day of November, 1892.

Mary L. Russell
v.
Eugene Russell. } Equity. No. 14,262.

On motion of the complainant, by Mr. J. Thomas Bothron, her solicitor, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce a vinculo matrimonii on the ground of desertion.

A. C. BRADLEY, Justice.
45 A true copy. Test: J. R. Young, Clerk.
By M. A. Clancy, Asst. Clerk.
[Filed November 8, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
the 4th day of November, 1892.

Emma H. Fitch
v.
Sanford E. Fitch. } No. 14,262. Equity Doc. 34.

On motion of the plaintiff, by Mr. Clarence A. Brandenburg, her solicitor, it is ordered that the defendant, SANFORD E. FITCH cause his appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce on the ground of desertion.

By the Court: A. C. BRADLEY, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
45 By M. A. Clancy, Asst. Clerk.
[Filed Nov. 4, 1892. J. R. Young, Clerk.]

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

Thomas J. Holmes } v. In Equity. No. 14,233. Docket 34.
Mary Jane Brady.

It appearing to the court that process has been duly issued herein on October 6, 1892, to the respondent, Thomas H. Montgomery, and that said process has been returned on November 1, 1892, as to said respondent "Not to be found," it is this ninth day of November, A. D. 1892, upon motion of Thomas M. Fields, solicitor for the complainant, ordered that said THOMAS H. MONTGOMERY cause his appearance to be entered herein on or before the first rule day, the first occurring forty day after the date hereof; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in the Washington Law Reporter and The Evening Star, newspapers printed and published in the city of Washington, in the District of Columbia, once per week for each of the three successive weeks prior to said rule day.

The object of this suit is to enforce a mechanics' lien against subplot 25, in square 944.

By the Court: A. C. BRADLEY, Justice.
A true copy. Test: J. R. Young, Clerk,
45 By M. A. Clancy, Asst. Clerk.

SECOND INSERTION.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of EMMA M. COMBS, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 29th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of October, 1892.
JOSE M. YZNAGA,
44 Nathaniel Wilson, Proctor. May Building, City.

This is to Give Notice

That the subscriber, of Washington, D. C., hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, letters testamentary on the personal estate of CHARLES D. COLEMAN, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of May, 1893, [1893] next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of October, 1892.
ANNA M. COLEMAN, Executrix,
44 No. 1311 R. I. Ave.

This is to Give Notice

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of JOHN O'NEAL, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of October, 1892.
ELLEN O'NEAL,
44 Hugh T. Taggart, Proctor. 3800 M st., Geotwn., D. C.

This is to Give Notice

That the subscriber, of Washington, D. C., has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of W. BROWN CURRY, late of Washington, District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 28th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of October, 1892.
A. A. HOEHLING, jr.,
44 1416 F st., nw.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

This 2d day of November, 1892.
Thomas H. G. Todd }
The Unknown Heirs of Luke Wheeler, and The Unknown Heirs of John Cowper.

On motion of J. J. Johnson and William B. Todd, solicitors for the complainant, it is ordered that the defendants, the unknown heirs of Luke Wheeler and the unknown heirs of John Cowper, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to enforce the execution of a conveyance by the said defendants to the complainant of part of subdivision, lot No. 31, in square No. 455, beginning for the same at the northwest corner of said lot 31; thence south 17 ft., $\frac{3}{4}$ inches; thence east 48 ft., 3 inches; thence north 17 ft., $\frac{3}{4}$ inches; thence west 48 ft., 3 inches to the place of beginning.

A. C. BRADLEY, Justice.
J. R. Young, Clerk.
By M. A. Clancy, Asst. Clerk.

44 [Filed November 2, 1892. J. R. Young, Clerk.]

This is to Give Notice

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of ANDERSON ARNOT, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of November, 1892.
AMERICAN SECURITY AND TRUST COMPANY,
44 By JOHN RIDOUT, Trust Officer.

This is to Give Notice

That the subscriber, of Washington, D. C., hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of MICHAEL P. CALLAN, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of July, 1893, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of November, 1892.
THOS. H. CALLAN,
44 No. 5088. Ad. D., 18. 472 La. Ave.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 20th day of October, 1892.
Margurite Kuder } v. No. 14,201. Equity Doc. 34.
Louis F. Kuder.

On motion of the plaintiff, by Messrs. Alex. H. Bell and John Mawdsley, her solicitors, it is ordered that the defendant, LOUIS F. KUDER, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is divorce from the bond of marriage with said defendant, and the ground therefor as alleged by the bill herein filed is desertion for a period of over two years.

By the Court. A. C. BRADLEY, Justice, &c.
44 A true copy. Test: J. R. Young, Clerk, &c.

This is to Give Notice

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of WILLIAM H. CLAGETT, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 28th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of October, 1892.
ADELE CLAGETT,
44 Howard C. Clagett, Proctor. No. 1008 16th St., nw.

Legal Notices**This is to Give Notice**

That the subscriber, of New York City, N. Y., hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of CAROLINE H. SHEARMAN, late of the District of Columbia, deceased. All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of October, 1892.

WILLIAM H. HIGBEE.

Care WARD THORON,
44 Ward Thoron, Proctor. 1506 Pa. Ave.

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of JOHN ADAMS, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of October, 1892.

HANNAH ADAMS.

44 Geo. F. Williams, Proctor. 114 11th st., se.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 31st day of October, 1892.

Anna Lynch v. Edward T. Mathews, No. 14,114. Equity. Doc. 34.

On motion of the plaintiff, by Mr. James Hoban, her solicitor, it is ordered that the defendants, Rachel B. Mathews, widow, Charles S. Mathews, Minnie M. Mathews, his wife, Charles W. Hayes, Sophia S. Chappell, William Chappell, her husband, Louisa C. Polk, Trusten Polk, her husband, Eliza A. Mathews, widow, Charles A. Mathews, Mary D. M. Mathews, his wife, Andrew S. Mathews, William B. Mathews, George W. Mathews, Abbie C. Mathews, his wife, Mary C. Mathews, widow, Laura Mandeville, Henry C. Mandeville, her husband, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to have complainant's title to the part of lot three (3), in square numbered four hundred and eighty-eight (488), described in the fourth paragraph of her bill filed in this cause, adjudged and decreed by the court, to be a fee simple title and so made of record, and that the said Edward Mathews and John Ridout, trustees, defendants, and the other defendants hereto, their agents and attorneys, and all other persons in their behalf, may be perpetually enjoined from claiming the said property against complainant, or in any manner interfering with the said complainant, in her full enjoyment of her said fee-simple title in the same.

This order to be published once a week for three weeks in The Evening Star and as well in the Washington Law Reporter.

By the Court. A. C. BRADLEY, Justice, &c.
A true copy. Test: J. R. Young, Clerk.
44 By M. A. Clancy, Asst. Clerk.
[Filed October 31, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Catharine Jordan v. Caesarius Jordan, No. 14,171. Equity Doc. 34.

On motion of the petitioner, by Messrs. Nauck & Nauck, her solicitors, it is on this 28th day of October, A. D., 1892, ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

Provided this order be published once a week for three successive weeks in The Washington Law Reporter before said rule-day.

The object of this suit is to obtain an absolute divorce from the defendant upon the ground of desertion and abandonment.

True copy. Test: A. C. BRADLEY, Justice.
J. R. Young, Clerk.
By M. A. Clancy, Asst. Clerk.
44 [Filed October 28, 1892. J. R. Young, Clerk.]

Legal Notices**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

Anne Faina v. Nalle Faina, No. 14,188. Equity. Doc. 34.

On motion of the petitioner, by Messrs. Nauck & Nauck, her solicitors, it is on this 28th day of October, A. D. 1892, ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

Provided a copy of this order be published once a week for three successive weeks in the Washington Law Reporter before said rule-day.

The object of this suit is to obtain an absolute divorce from the defendant upon the ground of desertion and abandonment.

A. C. BRADLEY, Justice.
J. R. Young, Clerk.
44 By M. A. Clancy, Asst. Clerk.
[Filed October 28, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

Holding a Special Term for Orphans' Court Business,

November, 4, 1892.

In the case of Wilbur J. Allen, executor of CATHERINE NIEDFELDT, deceased, the executor aforesaid has, with the approval of the Court, appointed Friday, the 2d day of December, A. D. 1892, at 11 o'clock, a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the executor will take the benefit of the law against them.

Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: L. P. WRIGHT, Reg. of Wills, D. C.
44 No. 4,593. James Coleman, Proctor.

THIRD INSERTION.**This is to Give Notice**

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of JOHN H. RUSSELL, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of October, 1892.

D. C. GOODALE, Admr.
1335 E St., n. w.

McDonald, Bright & Fay, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding an Equity Court

the 25th day of October, A. D. 1892.

Zadok T. Galt, Surviving Trustee, &c., Plaintiff v. George M. Robeson, Surviving Administrator et al.,

Defendants.

No. 11,718. Equity Docket 28.

On motion of Mr. Blair Lee, solicitor for the Children's Hospital, the complainant in a cross-bill filed in the above entitled cause, it is ordered that the following named defendants to said cross-bill, namely: George M. Robeson, surviving administrator of the estate of J. Wyllie Aulick, Francis F. Conover, Richard F. Conover, Sophia S. Conover, Rachel W. Baker, Helen Louise Morris, Henry J. Carnes, John Carnes, Julia M. Stout, Mary A. Stout, Mary M. Leland, Richmond O. Aulick, certain unknown heirs of Henry J. Miller, and other unknown next of kin of the late Cornelia A. Dikeiman, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of said cross-bill is to construe the last will and testament of the late Cornelia A. Dikeiman, deceased, to state the account of Zadok T. Galt, surviving trustee of her estate and to obtain a decree in favor of the complainant in said cross-bill for its proportionate share of the residuum of said estate.

True copy. Test: A. C. BRADLEY, Justice.
J. R. Young, Clerk.
By M. A. Clancy, Asst. Clerk.
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Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

Holding an Equity Court
the 20th day of October, A. D. 1892.

Zadok T. Galt, Surviving Trustee, &c., Plaintiff, v. George M. Robeson, Surviving Administrator, et al.,
Defendant.

No. 11,718. Equity Docket 29.

On motion of Mr. Woodbury Blair, solicitor for the Evangelical Educational Society of the Protestant Episcopal Church, the complainant in a cross-bill filed in the above entitled cause, it is ordered that the following named defendants to said cross-bill, namely: George M. Robeson, surviving administrator of the estate of J. Wylie Aulick, Francis F. Conover, Richard F. Conover, Sophia S. Conover, Rachel W. Baker, Helen Louise Morris, Henry J. Carnes, John Carnes, Julia M. Stout, Mary A. Stout, Mary M. Leland, Richmond O. Aulick, certain unknown heirs of Henry J. Miller, and other unknown next of kin of the late Cornelia A. Dikeman, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of said cross-bill is to construe the last will and testament of the late Cornelia A. Dikeman, deceased, to state the account of Zadok T. Galt, surviving trustee of her estate and to obtain a decree in favor of the complainant in said cross-bill for its proportionate share of the residuum of said estate.

True copy. Test: A. C. BRADLEY, Justice.
43 J. R. Young, Clerk.
By M. A. Clancy, Asst. Clerk.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration c. t. a. on the personal estate of HARRIET W. SHACKLETT, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of October, 1892.
RALEIGH SHERMAN,
43 P. E. Dye, Proctor. 514 11th St., n. w.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration, d. b. n. on the personal estate of WARNER SMITH, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of October, 1892.
WILLIAM H. LEE,
43 W. K. Duhamel, Proctor. No. 18 C St., n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.
October 26th, 1892.

In the case of William H. Barstow, administrator of JOHN BRIEN, deceased, the administrator aforesaid has, with the approval of the court, appointed Friday, the 25th day of November, A. D. 1892, at 11 o'clock a. m. for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the administrator will take the benefit of the law against them.

Provided, a copy of this order be published once a week for three weeks in the "Washington Law Reporter" previous to the said day.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
43 No. 4522. Ad. D. 17. John Ridout, Proctor.

Legal Notices.**This is to Give Notice**

That the subscriber, of the New York City hath obtained from the Supreme Court of the District of Columbia holding a special term for Orphans' Court business, letters testamentary on the personal estate of FRANK FORSTER alias CLEMENT STROBL, late of the United States Army, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 22d day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of October, 1892.

WILLIAM Q. JUDGE,
Executor of Estate of Frank Forster alias Clement Strobl,
144 Madison Ave., N. Y. City.
43 J. Guilford White, Proctor, 919 F St., n. w.

This is to Give Notice

That the subscriber, of District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of LINDEN KENT, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of October 1892.

JAMES LOWNDES,
43 Ward Thoron, Proctor. 1505 Pa. Ave.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.
October 24th, 1892.

In the case of Alfred G. Gross, administrator of the estate of CORDELIA SKIDMORE, deceased, the administrator aforesaid has, with the approval of the court, appointed Friday, the 18th day of November, A. D. 1892, at 2 o'clock p. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares or a residue, are hereby notified to attend or by agent or attorney duly authorized, in person with their claims against the estate properly vouched; otherwise the administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: L. P. WRIGHT,
Register of Wills for the District of Columbia.
43 No. 4108. Ad. D. 16. E. A. Newman, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding an Equity Court

the 20th day of October, A. D. 1892.
Zadok T. Galt, Surviving Trustee, &c., Plaintiff, v. George M. Robeson, Surviving Administrator, et al.,
Defendants.

No. 11,718. Equity Docket 29.

On motion of Mr. Woodbury Blair, solicitor for the Domestic and Foreign Missionary Society of the Protestant Episcopal Church of the United States, the complainant in a cross-bill filed in the above entitled cause, it is ordered that the following named defendants to said cross-bill, namely: George M. Robeson, surviving administrator of the estate of J. Wylie Aulick, Francis F. Conover, Richard F. Conover, Sophia S. Conover, Rachel W. Baker, Helen Louise Morris, Henry J. Carnes, John Carnes, Julia M. Stout, Mary A. Stout, Mary M. Leland, Richmond O. Aulick, certain unknown heirs of Henry J. Miller, and other unknown next of kin of the late Cornelia A. Dikeman, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of said cross-bill is to construe the last will and testament of the late Cornelia A. Dikeman, deceased, to state the account of Zadok T. Galt, surviving trustee of her estate and to obtain a decree in favor of the complainant in said cross-bill for its proportionate share of the residuum of said estate.

Test: A. C. BRADLEY, Justice.
A true copy. Test: J. R. Young, Clerk.
43 By M. A. Clancy, Asst. Clerk.

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WASHINGTON, D. C., - - - NOVEMBER 17, 1892

Supreme Court of the United States.

Decided October 31, 1892.

The Cincinnati Safe and Lock Company et al., Plaintiffs in Error, vs. The Grand Rapids Safety Deposit Company.

In error to the Circuit Court of the United States for the Southern District of Ohio.

The CHIEF JUSTICE: Judgment was rendered in this case by the Circuit Court of the United States for the Southern District of Ohio on April 25, 1891. An entry was made of record, June 19, 1891, that the court "allows a writ of error to the Supreme Court of the United States, with stay of execution, upon the filing of a supersedeas bond," as described, and such a bond was filed and approved June 20, 1891. A petition for the allowance of the writ of error and an assignment of errors were filed in the clerk's office of the Circuit Court, July 3, 1891, and the writ of error bears test and was filed in that office on that day, and a citation to the party adverse signed and served.

The motion to dismiss must be sustained upon the authority of *Wauton v. De Wolf*, 142 U. S., 138; *Brooks v. Norris*, 11 How., 203; *Credit Co. v. Arkansas Central Railway Co.*, 128 U. S., 258, and cases cited.

Writ of error dismissed.

USURY—Corporations.—When an agent of a foreign loaning corporation is acting under a contract therewith which provides that "all commissions on loans by the company, and all bonuses payable by borrowers in respect to such loans, shall belong to the company," he is presumed to be acting for the company in collecting commissions on loans in excess of lawful interest, when the company has knowledge of each step taken by him in their negotiation, although the agent receives the exclusive benefit of the commission. *Investment Co. v. McBroom*, 30 Pac. Rep., 859.

Supreme Court of Rhode Island.

THAXTER v. TURNER.

DEDICATION—SALE BY PLAT.

Where the owner of land plats it into lots and sells one of them by reference to the plat, which has been recorded, the sale constitutes a dedication of all the streets marked on the plat, and at the suit of the purchaser a court of equity will enjoin the vendor from obstructing any of them.

Decided July 23, 1892.

PER CURIAM: The law seems to be well settled, where the owner of land divides it into house lots, streets, and public places, for the purposes of sale, by having the same platted, and recording the plat in the office of the recorder of deeds, and then sells one or more of said lots, describing the same by a reference to said plat, that he thereby annexes to each lot sold a right of way in the platted streets delineated on said plat, which neither he nor his successors can afterwards interrupt or control. In Elliott, Roads & S. pp. 112, 113, this principle is laid down as follows: "It is not only those who buy land or lots abutting on a street or road laid out on a map or plat that have a right to insist upon the opening of the street or road, but where streets and roads are marked on a plat, and lots are bought and sold with reference to the plat or map, all who buy with reference to the general plan or scheme disclosed by the plat or map acquire a right in all the public ways designated thereon and may enforce the dedication." The plan or scheme indicated on the map or plat is regarded as a unity and it is presumed, as it well may be, that the public ways add value to all the lots embraced in the general scheme or plan. Certainly, as every one knows, lots with convenient cross streets are of more value than those without, and it is fair to presume that the original owner would not have donated land for public ways, unless it gave value to the lots."

"So, too, it is just to presume that the purchasers paid the added value, and the donor ought not, therefore, to be permitted to take it from them by revoking part of his dedication." See also, *Rowan's Ex'rs v. Town of Portland*, 8 B. Mon., 232; *In re Opening of Pearl Street*, 111 Pa. St., 565, 5 Atl. Rep., 430; *Bartlett v. Bangor*, 67 Me., 480; *De Witt v. Village of Ithaca*, 15 Hun., 568. In 2 Dill. Mun. Corp., (4th Ed.) Sec. 640, the author states the rule thus: "While a mere survey of land, by the owner, into lots defining streets, squares, etc., will not, without a sale, amount to a dedication, yet a sale of lots with reference to such a plat or describing lots as bounded by streets, will, as between the grantor and grantees, amount to an immediate and irrevocable dedication of the streets, binding upon both vendor and vendee." The same doctrine was announced by this court in *Chapin v. Brown*, 15 R. I., 579, 10 Atl. Rep., 639. See also, *Clark v. City of Providence*, 10 R. I., 437.

It is clear that the complainant has no adequate remedy at law in the premises. The demurrer is therefore overruled.

SUPREME COURT OF THE DISTRICT OF COLUMBIA.

IN GENERAL TERM.

NICHOLAS T. HALLER

vs.

NATHAN B. CLARK.

1. Plainly the wife of the defendant would not have been a competent witness for her husband at common law; and in the opinion of this court, the Evidence Act has made no change in that regard.
2. The objection to the testimony of the wife, when offered in behalf of her husband, rests solely upon grounds of public policy and to that the statute has no application.
3. Exceptions to the auditor's report should not leave the court in doubt whether the ground of the complaint is an absence of evidence, or a preponderance against the auditor's conclusion, or whether the testimony relied on was inadmissible in law.
4. The rule by which this court is governed in considering such exceptions as are proper in form, is found in *Crawford v. Neale*, 144 U. S., page 585, where the court says: "The findings and conclusions of a master upon conflicting testimony are to be taken as presumptively correct, and unless some obvious error in the application of the law has intervened, or some serious or important mistake has been made in the consideration of the evidence, the decree should stand."
5. If certain parts of the contractor's work were accepted by the defendant after they were completed, such acceptance implies that the work is to be paid for, and it is too late to renew objections that had thus been waived, when suit is brought to recover.
6. The court may take cognizance of matters of history sufficiently to know that the shipping of English brick to this country had ceased perhaps a hundred years before the house in question in this case was built.
7. The objection to the apportionment of the auditor's fee and its amount would seem to be within the discretion of the justice below, under the Seventy-seventh Equity Rule.

In Equity. No. 9,889. Decided October 31, 1892
The CHIEF JUSTICE and Justices HAGNER and JAMES, sitting.

Mr. E. H. THOMAS for plaintiff.

Messrs. CARUSI & MILLER for defendant.

Mr. Justice HAGNER delivered the opinion of the Court:
This is a bill in equity filed by the complainant to enforce a mechanics' lien for work done on a dwelling situated near Rock Creek on K street in the city of Washington, belonging to the defendant.

The bill alleges that on the 9th of October, 1885, the complainant entered into a contract with the defendant to remodel the building for the sum of \$2,800, to be paid

in instalments; that in accordance with the requirements of the contract he did remodel it and became entitled to the payment of the sum agreed on, but the complainant only paid him \$1,200, leaving a balance of \$1,600 due; that during the remodeling of the dwelling, certain extra work was done, by agreement for which \$460 is a proper remuneration, but no part of which has been paid; that the building was completed by the 20th of February, 1886, and he claims the benefit of the statute to enforce his lien against the property.

The defendant, in his answer, replies at length to the charges made by the complainant. In general it is enough to say he admits having made the contract referred to and made an exhibit to the bill; that the complainant claims to have performed the contract, but he denies that he did so; that the work was not done by the complainant according to his obligation, and that what was actually done, was of such inferior character, that it was of very little use to him; that the extras were matters which the complainant was obliged to do under the contract, and that they were badly done like the rest of the work; that the consequence of the whole affair was the house was unlike that which the complainant had contracted to present to him, after being remodeled; and was so inferior in workmanship, and so defective that he was obliged to expend in making it habitable a large sum of money, claimed in his exceptions to the auditor's report to amount to \$3,641.50; which if a cross bill had been filed and the defendant's claims were proved would represent what the complainant would have to pay, in addition to his outlay in repairing the house.

One of the items in this statement is a charge of \$650 for the improper construction of the front wall of the house. Another is \$400 on account of plastering badly done; another is \$917.52 for repairs that were rendered necessary by the bad work of complainant; \$350 for changes in the plans; and there is also a claim of \$350 loss of rent by delay.

The contract entered into between the parties originally is a very remarkable document. If they had taken special pains to devise a scheme by which they would surely get themselves into trouble, they could scarcely have succeeded better than they did in this agreement. It was prepared on a blank printed in a town in New York, and is stated therein to be the copyright property

of the inventor and is intended for record in the town clerk's office in that State. Evidently the defendant and complainant expended their money for attorneys too late; they should have gotten some capable person to prepare their contract before the work began.

In the printed part of the agreement Haller contracts "well and sufficiently to *erect*, finish and deliver the house in a true, perfect, and thoroughly workmanlike manner," although the house had been erected for many years. Then in writing he agrees: "To remodel an old house, said house to be turned into flats, located on K street, between 26th and 27th streets, north-west. Work required in the erection and completion of said building or flats for the party of the second part, on ground situated as aforesaid, in the city of Washington, District of Columbia, agreeably to plans, drawings and specifications prepared for said works by Nicholas T. Haller, architect, to the satisfaction and under the direction and personal supervision of *Nicholas T. Haller, architect*." The latter part of this paragraph was afterwards changed, by interlineation so as to read "to the satisfaction and under the direction and personal supervision of *Mrs. H. W. Clark, architect*"—she being the wife of the defendant. Then follows a covenant by the party of the second part that he will pay for the work: "Provided that in each case of said payments, a certificate shall be obtained from and signed by *Nicholas T. Haller, architect*, to the effect that the work is done in strict accordance with the drawings and specifications and that he considers the payment properly due." The chances were, decidedly, that Haller as architect would probably have no great difficulty in certifying that his own work as contractor had been properly performed. But a valuable safeguard was introduced in the latter part of the contract, in these words: "Should any dispute arise respecting the true construction and meaning of the contract and specifications, as to what is extra work outside of the contract, the same shall be decided by *Nicholas T. Haller, architect*, and his decision shall be final;" which also was changed, so as to read: "The same shall be decided by *Mrs. H. W. Clark, architect*, and his decision shall be final."

The result that might have been expected followed. The parties differed of course; and that was the occasion of the filing of this bill. The case went to proof, and on

the 29th of June, 1889, the court below referred it to Mr. Johnson, as special auditor, to examine the testimony taken in the cause, and digest the same for the court, and report what deduction, if any, should be made from the claim of complainant for omitted work, and for defective work, as in violation of the contract with the defendant; also for work done by defendant in making good defective work of complainant; also to allow for all money paid by defendant for and on account of mechanics' and material men's liens filed in the clerk's office against said property. All questions respecting the competency of the testimony, or any part thereof, the legal rights of the parties upon the whole proof, were to be passed upon by the auditor, subject to the review of the court. The auditor was also required to set forth the items claimed and allowed or disallowed by him, so as to present his findings to the court in detail.

On the 24th of July, 1889, that order was modified by vacating so much as required the auditor to digest the testimony, and directing him to ascertain, pass upon, and report the claims set forth in the complainant's bill and the defendant's answer, and the claims of the defendant of recoupment as set forth in the answer and testimony.

The testimony taken in the case fills four volumes, containing upwards of fifteen hundred pages of type writing, which the solicitors say they analyzed before the auditor for twenty-two days. The auditor made his report, which varies from the claims of the two parties in several respects.

There were fifteen items of extra work claimed by the complainant. The auditor rejected two of them; one for putting in a servants' water closet, and the other for putting in a window. He reduced the item for putting in wooden girders, from \$100 to \$50; allowed the defendant \$70 on four items which are embraced in the defendant's bill of particulars; and gave him credit for \$1,200 paid, and for \$637.84 which he had paid to material men, who had filed liens against the property; and as a result of his examination he reported the balance due to the complainant to be \$1,608.96.

Thereupon eighty-four exceptions to the report were filed by the defendant, and on these the case was heard by the equity court. The industry of counsel for the defendant

in preparing this volume of complaints is certainly very remarkable; but their examination has imposed a very serious burden upon the court in a case of very moderate pecuniary importance. We have endeavored as far as we possibly could, to make that examination thorough.

The only question of law raised by the exceptions, is whether Mrs. Clark, the wife of the defendant, was a competent witness to testify in behalf of the defendant. Upon objection by the complainant the auditor declined to consider her testimony and that ruling was affirmed by the justice below.

Plainly she would not have been a competent witness for her husband at common law; and we think the Evidence Act has made no change in that regard. As was said in *Lucas vs. Brooks*, 18 Wallace, 436, the objection to the testimony of the wife when offered in behalf of her husband, rests solely upon grounds of public policy and to that the statute has no application.

It is insisted, however, that by the terms of this contract Mrs. Clark was constituted the agent of the parties, which brings her within a recognized exception to the rule; and in support of this doctrine, several cases were cited; but they fail to sustain the contention.

When the parties selected Mrs. Clark as their agent, as is insisted, they must be supposed to have done so with reference to her existing incapacity to testify, which might operate unfavorably to either party; but this hardship does not remove the objection to the reception of her testimony upon the grounds of public policy.

In the case of *Stickney vs. Stickney*, 131 U. S., 227, which has been cited as showing in some way a modification of the strictness of construction on this point this question of agency was not involved. There, a widow was allowed to testify with respect to her separate estate, and to give a history of her investments, although some of her money had passed through her husband's hands. The ruling of the court below on this point was correct.

We are met by a difficulty as to the form of these exceptions. In Alexander's Practice, page 127, it is said: "Each exception should point to some particular fault in the report. General exceptions are not to be allowed."

In 11th Wheaton, 126, *Harding vs. Handy*, Chief Justice Marshall says: "The exceptions are to be regarded so far only as they are supported by the special statements of the

master or by evidence which ought to be brought before the court by a reference to the particular testimony on which the exception relies. Were it otherwise, were the court to look into the immense mass of testimony laid before the commissioner, the reference to him would be of little avail."

In *Story vs. Livingston*, 13 Peters, 365, the court, in considering exceptions to a master's report, said: "All these exceptions, except the third, are irregularly taken, and might be disposed of by us without any examination of them in connection with the master's report. They are too general; indicate nothing but dissatisfaction with the entire report, and furnish no specific grounds, as they should have done, wherein the defendant has suffered any wrong, or as to which of his rights have been disregarded.

* * * Exceptions to reports of masters in chancery are in the nature of a special demurrer, and the party objecting must point out the error, otherwise the part not excepted to will be taken as admitted."

In *Greene vs. Bishop*, 1 Clifford, 192, the court said: "General exceptions are not sufficient. A party excepting to the report must designate particularly the erroneous action excepted to, and refer the court distinctly and clearly to the ground of his exception."

Exceptions should not leave a court in doubt whether the ground of the complaint is an absence of evidence, or a preponderance against the auditor's conclusion, or whether the testimony relied on was inadmissible in law. To enter upon a conjectural search to ascertain the ground of complainant would compel us to explore the entire cause, in examining each exception in an endeavor to discover in the proofs defects, which the exceptant had not taken the trouble to call to our attention.

A reading of a few of these exceptions will show how completely they violate this rule.

In No. 10 $\frac{1}{2}$, he excepts "to said report as allows plaintiff \$2,800, because proof shows plaintiff did not perform his contract"; in No. 11 he excepts "to said report as allow plaintiff \$1,600 as balance of contract price of \$2,800, because plaintiff did not perform his contract." In No. 11 $\frac{1}{2}$ he excepts "to the said report as finds the wall was erected as per contract, because same is not supported by the proof." In No. 12, he excepts "to said

report as finds said wall was substantially erected as per contract, because same is not supported by proofs."

These are samples of many of the eighty-four exceptions, which are substantially like those which, in *Story vs. Livingston*, 13 Peters, the court held were insufficient. The application of this rule excludes from our consideration a large proportion of the exceptions.

The rule by which we are governed in considering such exceptions as are proper in form has been repeatedly laid down by the Supreme Court of the United States, and is repeated in *Crawford vs. Neale*, 144 U. S., page 585, where the court says: "The findings and conclusions of a master upon conflicting testimony are to be taken as presumptively correct, and unless some obvious error in the application of the law has intervened, or some serious or important mistake has been made in the consideration of the evidence, the decree should stand." In the recent case of *Furrer vs. Ferris*, 145 U. S., page 134, the court restates this position, and cites with approval the case of *Crawford vs. Neale*, with a number of others, to the same effect.

The testimony has been examined with reference to such exceptions as are properly taken. To attempt a recital of it at this time would be an improper consumption of time, not justified by our engagements, by the rights of other suitors, or the importance of this case. We can now refer to only a few of the exceptions of the class we refer to.

The most important are those which go to the rejection of the entire claim under the contract for the \$2,800, on the ground that none of it was earned because the work was not performed in accordance with the contract and specifications, and most of what was done was so badly executed that no obligation rested upon the defendant to pay for any part of it. A serious controversy exists as to what were the contracts and specifications which were actually adopted by the parties, as several forms of contract were before the parties at different times, and four sets of drawings and specifications were produced before the auditor.

The auditor examines this contention, and states as his conclusion from the testimony that those marked W. H. S. No. 1 and N. B. C. No. 3, are more in consonance with the house as remodeled than any of the others.

This is made the subject of defendant's exceptions Nos. 3 to 10, inclusive, and of eleven pages in his first printed brief, and of fifteen pages in the printed brief of the com-

plainant. Each argument is largely composed of quotations and references to the volumes of testimony. An examination of these arguments and references has failed to disclose "such serious or important mistake" by the auditor in his consideration of the evidence upon this point, as is alluded to in the Supreme Court, in *Crawford vs. Neale*.

Many of the defendant's objections to particular portions of the work are disallowed by the auditor upon the ground that those parts were accepted by the defendant after they were completed. If this were the fact, such acceptance implies that the work was to be paid for, and it would be too late to renew objections that had thus been waived, when suit is brought to recover, (*Dermott vs. Jones*, 2 Wallace, page 9,) and this, although the work was not done according to the stipulations of the contract.

"Where deviations from the plan furnished by the contract are made known to the party entitled to insist upon a compliance with it, his assent, as in like cases, may be presumed, if he, having opportunity, and having his attention expressly directed to the subject, do not insist upon his rights with such a degree of consistency and firmness as shall amount to a notice of his dissent. A mere complaining of the aberration, while it may have been rectified, followed by conduct or language that indicate acquiescence, will not enable him, when the work has proceeded too far for remedy, to take advantage of the faulty particular." *Barley vs. Woods*, 17 New Hampshire, 371.

Such seems to have been the conduct of the defendant with respect to the front wall and other portions of the building now complained of. The defendant insists that as the contract required the entire front wall to be taken out of the house, he is entitled to recoup \$650 from complainant's claim on this account. It is shown the complainant removed the entire wall, except the extreme ends, which were left as piers to prevent the walls of adjacent houses from falling in. The evidence is that this arrangement was a safe one; that Clark saw exactly what was being done, and when he complained it was not satisfactory Haller said he would make it so, and he did make alterations in the work and had it sanded and painted, and that notwithstanding the previous complaints payments were afterwards made by Clark upon the work.

The statement as to bad workmanship in using the so-

called old English brick with new brick, is not sustained by the evidence, certainly not to an extent beyond the \$75 allowed to the defendant by the court below on this account. The photograph of the front wall, as now existing, does not disclose the irregularities and imperfections said to disfigure its appearance. Whether there ever were any English brick in the building may well be questioned. So much importance was attached to this pretension that we are justified in recognizing as matter of history, that in the early colonial days the exports from this part of the country consisted of tobacco and other bulky commodities, while the return cargoes were made up of lighter articles, such as manufactured goods, and delicacies of food and raiment. There was, therefore, a necessity to take ballast on board in England; and as long as the people here would buy brick thus imported, they constituted a profitable form of ballast. But the shippers soon found, at least one hundred years before this house was built, that the people would not buy inferior English brick when they could procure a far better domestic article at a smaller price. The neighborhood of Washington soon became famous for the excellence of its brick, and the millions used in the construction of the Capitol and other public buildings, before the K street house was built, were burnt on the spot. The strong probability is that no house in this city was ever built of English brick—the popular superstition to the contrary. As matter of fact the English brick were smaller instead of larger than the American brick; the English statute in force about the time of the Revolution, requiring them to be only eight inches in length, instead of nine, as in this country.

It is needless to go further through the mass of exceptions. It is enough to say we are satisfied justice has been done to the parties by the decree of the court below, which modified the auditor's report in several respects. The auditor had reduced the bill for extras to \$385 from \$460, and the justice cut it down to \$330. The auditor also allowed \$170 on account of claims of the defendant, and this was increased to \$278. He also changed the allowance of interest, so that instead of the sum of \$1,600, as stated by the auditor, the decree of the court below was \$1,014.10. We think that ruling does full and substantial justice to the parties.

The court's apportionment of the fee of the auditor

and its amount would seem to be within the discretion of the justice below, under the seventy-seventh Equity Rule; and although the sum seems liberal, considering the moderate amount involved in the case, we cannot see that the discretion was abused, in view of the great mass of evidence, and the length of time consumed in the examination of the case by the auditor; and hence there is no ground upon which we can overrule the order of the court below upon this point.

This exception, and all others inconsistent with the decree of the court below are overruled, and the

Decree is affirmed in all respects.

ROBERT J. HOLLOHAN

vs.

THOMAS E. YOUNG.

1. Section 769 of the Revised Statutes relating to the District of Columbia does not apply to mechanics' liens.
2. As no authority is given to justices of the peace, in Section 997, which is the chart of their jurisdiction, or elsewhere, to interfere in proceedings to enforce mechanics' liens, those proceedings are quite without the operation of Section 769.
3. Neither are such proceedings within the limitation imposed upon the Chancery Court of Maryland, by the Act of 1777, Ch. 41, which is in force here.
4. This is clearly an additional jurisdiction outside of that to which the court was entitled when the Maryland Legislature passed the Act of 1777, Ch. 41.
5. The inconvenience which may be suggested as likely to arise from the prosecution in equity of such petty claims under the Mechanics' Lien Law, cannot interfere with the duty of the court to enforce the clear right given to the suitor.
6. Although the court might be compelled to give a decree for the sale of the property to pay a very small sum, it would still have control of the question of costs, and if there should appear to be a disposition to harass a debtor by needlessly instituting such proceedings, it would be within the discretion of the court to impose the costs on the gaining party.

In Equity. No. 12,464. Decided November 7, 1892.

The CHIEF JUSTICE and JUSTICES HAGNER and JAMES sitting.

Mr. W. P. WILLIAMSON for complainant.

Mr. J. J. JOHNSON for defendant.

Mr. Justice HAGNER delivered the opinion of the Court. This case, which was submitted without any argument or explanation, presents an interesting question as to the jurisdiction of this court in cases for the enforcement of mechanics' liens. The complainant gave notice of his lien and filed a bill with apt averments, alleging he was a sub-

contractor; that he did work on defendant's stable, upon which the balance claimed was still due; that the principal contractor gave him an order on the defendant which the defendant refused to pay, because, as he said, the contractor had left the work, and had been fully paid for all the work he had done.

The testimony taken in the case, all of which was adduced by the complainant, thoroughly supports the allegations of the bill, showing that the claimant, upon the defenses raised by the answer, was entitled to recover. A decree was passed dismissing the bill, upon the ground, as we were induced to suppose, that the amount claimed, which was only \$28, is beneath the jurisdiction of the chancery court.

This objection could only be based upon some special statute passed by Congress affecting the jurisdiction of this court; or upon some general principle of chancery practice to which we have fallen heir from the Maryland courts. The only provision on the subject in the Revised Statutes which could be held to be applicable is section 769, which declares: "The justices of the Supreme Court shall not hold original plea of any debt or damage in cases within the jurisdiction given to justices of the peace, which shall not exceed \$50, exclusive of costs." We think it clear this section does not apply to mechanic's liens. The litigations in which the court is forbidden to hold original plea are described as cases "of debt or damage within the jurisdiction given to justices of the peace." As no authority is given to justices of the peace in section 997, which is the chart of their jurisdiction, or elsewhere, to interfere at all in proceedings to enforce mechanics' liens, we think those proceedings are quite without the operation of section 769.

Neither are they within the limitation imposed upon the Chancery Court of Maryland, by the Act of 1777, chapter 41, in force here. That act provided that "His Majesty's Court of Chancery within this province shall not hear, try, determine or give relief in any cause, matter or thing, wherein the original debt or damages doth not amount to twelve hundred and one pounds of tobacco, or five pounds and one penny in money"—which, according to the rules for reducing tobacco to our currency would amount to a little more than \$20. (*Reynolds vs. Howard*, 3 Maryland Ch., 333.) This provision could not control the present case

because the amount involved is \$28; but as it may be important in other cases, it is proper to say we think the statute has no application to the special authority to enforce mechanics' liens superadded by the Act of Congress, to the general jurisdiction of chancery.

The statute first giving authority to enforce mechanics' liens was not passed until 1859, and the present law, chapter 143 of 1884, sections 2 and 5, states distinctly that "the proceedings to enforce the lien created by this act must be by a bill in equity," &c.

This is clearly an additional jurisdiction outside of that to which the court was entitled when the legislature passed the Act of 1777, Ch. 41.

In the original law of 1859, found in section 692, authority is given to the claimant to file a notice of lien against buildings, land and other property, &c., only "when the amount exceeds twenty dollars." In the present law that limit is omitted, which plainly evinces a legislative intention that thereafter there should be no limitation as to the amount required to give jurisdiction.

The inconvenience which may be suggested as likely to arise from the prosecution in equity of such petty claims under the Mechanics' Lien Law, cannot interfere with our duty to enforce the clear right given to the suitor. The more insignificant the claim, the more important it might be to the claimant, and he must have his rights, whether his claim is small or large. The supposed inconvenience might be somewhat controlled by the action of the court. Although it may be compelled to give a decree for the sale of the property to pay a very small sum, it would still have control of the question of costs, and if there should appear to be a disposition to harass a debtor by needlessly instituting such proceedings and thus take a vexatious advantage of the power given by this law, it would be within the competency of the court to impose the costs on the gaining party.

This decree is reversed, and the cause remanded for further proceedings.

FRANCIS A. PETINGALE

vs.

ABRAM F. BARKER ET AL.

1. Where the consideration for conveyance of real estate from the husband to his wife, consisted of her earnings and of savings of money which had been given to her by her husband, and moneys which she had received as a present from him at the time of executing deeds for him; which moneys she gave to her husband, who invested the same in real estate speculations from which profits resulted, and the husband credited her with such profits on the execution of the deed of conveyance to her, such money was not her separate property.
2. The husband was, in law, entitled to such money, and it could, therefore, form no valid consideration for such conveyance to her, as against the creditors of the husband.
3. The wife took nothing by such deed to her. The deed is a nullity, and conveys no interest to the wife as against creditors. The wife could not execute any deed of trust to bind the property.
4. Equity will, when the circumstances seem to require it, disregard the form in which the parties may have chosen to clothe their transaction, and look to the real status established by the evidence.
5. When a party has the elder, he therefore has the better equity, and for this, if for no other reason, he must prevail.

In Equity. No. 11,380. Decided October 31, 1892.
The CHIEF JUSTICE and Justices HAGNER and JAMES, sitting.

Mr. J. J. JOHNSON for plaintiff.

Mr. W. W. BOARMAN for defendant.

The CHIEF JUSTICE delivered the opinion of the Court:

This case comes here on appeal from the special term holding an equity court. The defendant, Abram F. Barker, and his wife, Sarah F. Barker, on the 29th of January, 1884, conveyed the property described in the bill to William W. Boarmen and others in trust to secure Elizabeth E. Dyer the sum of \$4,000. On the 15th of November, 1886, Barker and wife conveyed the same property to the same trustees to secure William P. S. Sangers the sum of \$2,500. At the time of the filing of the bill, the above mentioned trusts were due and unpaid.

On the 29th of August, 1887, Barker and wife conveyed the equity of redemption in the land or premises mentioned in the bill to Maria E. Gray, for the sum of \$5,000, and in the conveyance to Gray, Barker covenanted to pay off the trusts above mentioned, as well as to pay all the taxes due on the property. On the same day and at the same time the deed was executed to Gray, she, Gray, reconveyed the property in question to the defendant, Sarah F. Barker, the wife of William F. Barker, for the named consideration of \$3,800.

No claim is made that anything was paid by Mrs. Barker to Mrs. Gray at the time of the delivery of the deed to her by Mrs. Gray, nor was anything paid by Mrs. Gray to Barker or his wife at the time the deed was executed to her. The answers of Barker and his wife admit that neither of them paid anything to Gray as consideration for the property; but it is claimed by them in their answers and in their testimony that Mrs. Barker, instead of paying Mrs. Gray the consideration for the purchase of the property, paid \$3,800 to Barker.

On the 6th of September, 1888, complainant obtained a judgment against the defendant, Abram F. Barker, for the sum of \$2,100 with interest on \$1,000 from August 29th, 1887, and on \$1,000 from April 24th, 1888, until paid, and costs of suit. On the 21st of September, 1888, after the judgment had been rendered, and after the issue of execution and the placing of the same in the hands of the marshal, but before the return of the writ, Sarah F. Barker, with her husband, conveyed the same property to William W. Boarman and others in trust to secure her personal and individual notes for the sum of \$2,000, payable to the defendant, Charles S. Bradley.

The bill prays that a suitable person or persons may be appointed trustee or trustees to make sale of the real estate described in the bill, and the proceeds, after satisfying all lawful and *bona fide* preferred encumbrances thereon, be applied towards the payment of the complainant's said judgment.

Upon the hearing we learned, and we find it stated in the complainant's brief, that this property has been sold by the trustees named in the two first deeds of trust, and a sufficient amount of the proceeds applied to the discharge of these trusts, leaving a residue of \$1,100, which is to await the result of this suit. So that, really, so far as the contention between the complainant and Bradley is concerned, it is as to which of these parties shall have the remainder of the proceeds of the sale of this property, being the sum of \$1,100. It is important that this statement of the plaintiff should be correct, otherwise his rights might be different, in view of our conclusion, as to the rights of the parties in this case.

The testimony in the case shows, as I have already stated, that Barker and wife conveyed this property to Mrs. Gray after executing these two deeds of trust to Boarman,

as before mentioned, and that on the same day and on the same occasion, Mrs. Gray conveyed the same property to Mrs. Barker. No money passed between the parties at the time, but it is claimed that there was an actual accounting and payment of money, which, in a general way, Mrs. Barker claimed to be her own separate money and part of her separate estate, to her husband, as the consideration for this conveyance. Her own evidence and that of her husband, however, shows that it was not, in law, her separate estate; that it had accrued from her earnings and savings of money which had been given to her by her husband, and moneys which she had received at the time of executing deeds for her husband, as a present, and that she gave this money to her husband, and he invested it in real estate speculations from which profits resulted which her husband credited her with in this settlement made at the time of the execution of these deeds; by which it was ascertained that he had what was claimed at the time they were testifying, was her money in his hands, and that these credits of Mrs. Barker in the hands of her husband were exchanged and cancelled by the conveyance of the property in question to her.

We think it is very clear, under the decisions of this court and of the Supreme Court of the United States, that this was not her separate property. It was really money which the husband, in law, was entitled to, and it therefore could form no valid consideration, as against creditors of the husband, for this conveyance. In the first place, it is very clear that this was not a sufficient consideration for this property. Barker covenanted in his deed to Mrs. Gray that he would discharge the prior encumbrances represented by the two first deeds of trust, and pay all the taxes that might be due upon the property. It is manifest that the actual consideration which they say was paid, even if it had been paid out of the separate estate and money of Mrs. Barker, would have been so inadequate as that, for that reason, as against a bona fide creditor of the defendant, Barker, it would be a fraudulent sale, and subject to be set aside, possibly preserving, as a lien upon the property, the amount which Mrs. Barker might have paid, if she had paid it in good faith, and it was absolutely shown to be her separate estate.

We find then that this equity of redemption which the party undertook to convey to Mrs. Barker, through Mrs.

Gray, was still, notwithstanding this conveyance, as a matter of law, in Barker, and should be so treated by this court in this case, sitting as a court of equity.

In the bill the complainant states that he is informed and believes, and therefore avers and charges that said defendant Bradley holds security for the indebtedness to him by said Barker, and that said Barker gave said deed of trust after said judgment was recovered, for the express purpose of hindering and delaying the collection of said judgment, and in fraud of complainant's just rights.

There is no testimony whatever in support of that allegation, and it is not attempted to be proven by the complainant. The testimony of Mr. Bradley in the case completely disproves it, and shows that while he did, at one time, have security for the debt which was secured by the trust executed to him in this case, he subsequently surrendered those securities to Barker some months before the execution of the deed of trust to him upon the promise of Barker that he would execute to him a deed of trust, or otherwise secure him. It is furthermore shown, I think, beyond all question, that the debt due to Bradley, created by Barker for money loaned to him by Bradley, is a real, substantial and honest one, with no question of its validity between the parties. So that this charge made by the complainant in his bill falls to the ground.

That leaves the case in this situation: The deed of trust to Bradley was, on its face, executed to secure the payment of a promissory note executed by Mrs. Barker for \$2,000.

We find that this property, to which Mrs. Barker had a deed, is not her separate property, and that she took nothing by the deed. We are really compelled to regard the deed as a nullity, and as conveying no interest as against the claim of the complainant in this case, or as against the claim of any other creditor outside of Barker himself. The equity of redemption still remains with him, notwithstanding this effort to convey it.

Of course, it results that Mrs. Barker could not execute any deed of trust to bind this property.

In the next place her promissory note to Bradley was a nullity, and did not bind her nor her separate estate, if she had any. This is upon a well settled principle, established by the decisions of this and the Supreme Court upon that subject.

But the evidence does show that there was an actual in-

debtedness on the part of Barker to Bradley. It is said that this deed of trust was given to secure an antecedent debt, and therefore the transactions were not bona fide as against the claim of this complainant. There are two answers to that, and perhaps three. The first is that the evidence shows that this deed of trust was executed in pursuance of an agreement on the part of Barker that if Bradley would release to him securities that he then held for the payment of this indebtedness, he, Barker, would secure him by the execution of a deed of trust, which promise we think would be binding, and forms a good consideration for the subsequent execution of the deed of trust. In addition to that, it is in evidence that at the time or about the time of the execution of this deed of trust, Bradley agreed to and did give to Barker a sum of money—how large it is not stated in the evidence—which Barker needed to pay interest on some of his indebtedness, if Barker would execute the deed of trust. That money would form a consideration for the execution of the deed of trust, and would relieve it of the imputation of being an antecedent debt.

We do not think that the complainant here stands in a situation in which he could make that sort of a defence to this deed of trust. He had no lien upon the property, and acquired none by his judgment. He made no levy upon anything. He brings his suit here for the purpose of reaching equities upon the very ground that he has no lien or security for the payment of his judgment, that he is unable to reach any property belonging to the defendant, Barker, by execution, and that it is necessary for him to invoke the jurisdiction of a court of equity in order that he may reach alleged equities belonging to the defendant. This does not place him in the category of a purchaser, so as to enable him to make a question as to priority or preference with parties having liens antecedent to his commencing this suit. It is simply a question whether the claimed lien of Bradley is such a lien as should be maintained by a court of equity under the circumstances. If so, then it is superior to the claim of the complainant, who has not yet acquired a lien, but seeks to obtain one by a decree in this case.

This deed of trust was executed for Bradley's benefit to secure the debt of the husband, although the wife executed her note at the request of her husband. This is very analogous to the instance of the agent executing his note to secure the actual debt of the principal, in which case the

creditor may hold either or both for the debt. Equity will, when the circumstances seem to require it, disregard the form in which the parties may have chosen to clothe their transaction, and look to the real status established by the evidence.

In this case it is, in our judgment, established beyond all question that the defendants, Barker and wife, executed a deed of trust upon the equity of redemption in premises really belonging to Barker, to secure the payment of money to Bradley really owing by Barker to him. As the evidence shows Bradley to be a bona fide creditor without knowledge of any fraudulent purpose on the part of Barker in conveying this property to his wife, and that he in good faith accepted the deed of trust as a security for the payment of his debt, we are of the opinion that he is entitled to a lien paramount to the complainant, who has no lien nor right to have the property appropriated to pay his claim, beyond that which the court may give him in this case. Bradley has the elder, and therefore the better equity, and for this, if no other reason, must prevail.

Had this property not been sold, the right of the complainant would be subject to the three prior liens or incumbrances growing out of the execution of these three deeds of trust, to have the property sold and the money appropriated, first, to pay off these three encumbrances; secondly, to have the residue, if any, applied to his judgment. But as the property has been sold, this becomes a litigation for the residue of the fund left after satisfaction of the two first deeds of trust. As the satisfaction of Bradley's lien will exhaust the residue of the fund, the proper decree in the case is to dismiss the complainant's bill.

The decree of the court below will be affirmed.

WILLIAM W. RAPLEY

vs.

GEORGE A. SHEHAN.

1. When the objection to a question put to a witness, or the objection to his answer, is general, without the statement of any reason or grounds upon which the objection is made, neither the objection nor any exception that is sought to be saved under it, is of any validity.
2. This court would not be justified in setting aside the decision of the court below overruling the motion for a new trial, unless it should appear clearly that the evidence was entirely insufficient to justify the verdict.
3. In case of an appeal from the denial of a motion for a new trial on the ground that the verdict was against the weight of the evidence, it is the duty of this court to carefully consider the evidence and pass upon the question. But this court, in performing such duty, will not be unmindful of the fact that the jury and the judge in the court below had an opportunity to see and hear the witnesses, and had superior opportunities for judging of the weight which ought to be given to the testimony.

At Law. No. 28,521. Decided October 31, 1892.

The CHIEF JUSTICE and Justices HAGNER and JAMES sitting.

Messrs. ENOCH TOTTEN and E. A. NEWMAN for plaintiff.
Mr. H. E. DAVIS for defendant.

The CHIEF JUSTICE delivered the opinion of the Court:
This cause is here on exceptions and a *case*. The declaration contains three counts. The first is a special count for rent for a part of square west of square 471 and certain water front, wharf property and docks lying south and west of said square of the yearly rental of \$900, payable monthly, and the sum of \$1,950 is claimed as rent in arrears for the 26 months ending February 29, 1888; the second is a special count in *indebitatus assumpsit* for use and occupation of said premises; and the third is the common money counts. Particulars of demand, notice to plead and affidavit are attached to the declaration.

The first, second, and third pleas are the general issue; the fourth plea admits \$429.78 due the plaintiff as collections of rent made by the defendant as the agent of plaintiff, of which amount tender was made before suit. An affidavit of defendant is annexed to the pleas.

May 3, 1888, issue was joined. Trial was had, and on October 21, 1890, a verdict and judgment was rendered for plaintiff for \$439.78, with costs. On the 24th day of October, 1890, the plaintiff filed a motion for a new trial for the reasons (1) that the verdict is contrary to the evidence;

(2) that the verdict is against the law; (3) that the verdict is otherwise erroneous and wholly unsustainable on the evidence and instructions of the court; (4) that the court erred in its rulings of law at the trial, to which rulings exceptions were then and there taken by plaintiff's counsel, and duly noted on the minutes of the court before the jury retired.

A motion for a new trial was overruled November 24, 1890, and an appeal was taken from that decision to this court.

On the trial, the real defence of the defendant to the action of the plaintiff was that he surrendered the premises alleged to have been leased by the plaintiff to him, Shehan, on the last day of December, 1885, and that from that time he acted as agent of the plaintiff in the collection of rents for a portion of his property, namely, square west of square 471, and that as to the wharf property he had, with the assent of the plaintiff, on the very day that he rented of the plaintiff, in 1878, executed a sub-lease to an ice company, that the ice company had paid rent for a time, and then was succeeded by a party by the name of Rich, who paid rent up to the date that the defendant, Shehan, surrendered all the property, both the wharf property and the square west of square 471, to the plaintiff.

Rapley, the plaintiff, denies that there ever was a surrender of the possession of the premises, or any part of it to him. He claims that this property, from the 1st of January, 1886, to February 28, 1888—for twenty-six months—was all of it still, as a matter of law, and under the relations between him and Shehan, in the possession of Shehan under the original lease; that Shehan was still under obligation to pay him the sum of \$900 per annum, rent for this property, during the twenty-six months embraced in the suit. That constituted the issue of fact between the parties.

Plaintiff, in his brief, says that this is the principal question now involved in this case. He says of the exceptions taken at the trial to the rulings of the court on the questions of evidence, and to the testimony, that the several exceptions taken by the plaintiff's counsel on the questions of law raised at the trial may be found in the record, and ought to be sustained; but the principal question is, whether the evidence is sufficient to sustain the verdict, or whether the verdict is against the weight of the evidence.

Nothing more is said by counsel for plaintiff in argument to us upon the subject of the exceptions in the

record. We have looked at the exceptions, and we find that they are, every one of them, obnoxious to the objection that no statement was made by counsel at the time of the grounds upon which the objection was made. It was a general objection—simply, "I object to the question" or "I object to the answer." Neither before nor after the ruling of the court sustaining the objection is there any statement by counsel of the reason or grounds upon which it is made. This has been held repeatedly by this court, as well as by the Supreme Court, to be utterly fatal to the validity of any objection, or the validity of any exception that is sought to be saved under such circumstances. 5 Mackey, 127; 7 Mackey, 598; 3 Howard, 530.

We might stop here, so far as these exceptions are concerned, but we have examined each one of them and we do not find that any of them are apparently well founded. Of course, for the reason already mentioned, that no ground was stated by counsel to the court for the objection, it is almost impossible for us to know what the ground might have been had it been stated; but so far as we can ascertain from the record, there was no objection made by the plaintiff at the trial that ought to have been sustained by the court.

This leaves the objection that the verdict is contrary to the weight of the evidence. We have examined the evidence. It was taken by a stenographer and we have given it careful consideration. We are inclined to think that the preponderance of evidence was in favor of the defendant.

To be justified in setting aside the decision of the court below overruling the motion for a new trial, and in awarding a new trial, it would have to appear rather clearly to us that the evidence was entirely insufficient to justify the verdict; that the weight of evidence was not with the defendant, but was decidedly with the plaintiff. Of course we are not unmindful of what the Supreme Court has said in the case of *Moore vs. Metropolitan RR. Co.*, 121 U. S., 558, that the court may entertain an appeal from the denial of a motion for a new trial by the special term made on the ground that the verdict was against the weight of the evidence. We think in such a case it is our duty to carefully consider the evidence that has been given in the court below and ourselves pass upon the question; but in that case it is said that of course this court in performing this duty, will not be unmindful of the fact that the jury and the judge in the court below had an opportunity to see and hear the witnesses as they testified, and had superior opportunities to what we have of judging of the weight which ought to be given to the testimony.

But we are not embarrassed in this case. After reviewing it, we find no reason for setting aside the verdict on the alleged ground that it was made against the weight of the evidence.

The judgment of the court below will be affirmed.

A TEXAS sheriff, with papers in a civil suit, entered the house of an attractive widow and said:

"Madam, I have an attachment for you."

The widow blushed, but said something about reciprocation.

"You must proceed to court."

"I prefer you to do that."

"Come, hurry, please; the justice is waiting!"

"Oh, well, then you have the license, I suppose?"

The deputy cleared himself in time.—*Texas Siftings.*

The Law Reporter Co. will remove to the new and commodious building, 518 5th St., n. w., about December 1, 1892.

Rule of Court.

RULE 20. * * * * * Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be especially ordered or which may be selected by the parties.

Legal Notices

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. Holding a Special Term for Orphans' Court Business.

This 4th of November, 1892.

In re estate of MARY A. McQUILLAN, late of the District of Columbia. No 5266. Administration Doc. 18.

Application having been made for the probate of a paper-writing propounded as the last will and testament and codicil, for letters testamentary on the estate of said Mary A. McQuillan, deceased, by Thomas H. Calan:

Notice is hereby given to all concerned to appear in this Court on Friday, December 9, 1892, at 11 o'clock, a. m., to show cause if any exist against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter, once in each of three successive weeks before said day.

By the Court: A. C. BRADLEY, Justice.

A true copy. Teste: L. P. Wright, Reg. of Wills, D. C.

45 John F. Ennis, Proctor for applicant.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. the 10th day of November, 1892.

John H Walker } v. { Equity. No. 14,287.
Ralph Walker et al.

On motion of the complainant, by Mr John Ridout, his solicitor, it is ordered that the defendants, Ralph Walker, Emily M. Walker, Charles R. Walker, Catharine H. Dalziel, Elizabeth M. Dalziel, Fisher McPherson, James Chandler, Anne Chandler, Mary Daws, James Daws, Mary H. Walker, Dumrie Walker, Margaret R. Walker, Anne Edwards, Arthur W. Hewison, Lucy Hewison and Walford C. Locket, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a decree for sale, to make partition of lots numbered from five (5) to eighteen (18) both inclusive, in square numbered ten hundred and seventeen (1017) in the city of Washington, in the District of Columbia, of which George Walker died seized.

A. C. BRADLEY, Justice.

A true copy. Test: J. R. Young, Clerk.

By M. A. Clancy, Asst. Clerk.

45 [Filed November 10, 1892. J. R. Young, Clerk.]

Legal Notices

FIRST INSERTION.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA. the 15th day of November, 1892.

Mary Jane Coker nee Gass } v. { Octavius D. Gass and Mary V. Gass. } No. 14,212. Eq. Doc. 34.

On motion of the plaintiff, by Mr. H. B. Moulton, her solicitor, it is ordered that the defendants, OCTAVIUS D. GASS and MARY V. GASS cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to correct a deed relating to sub-lot number ninety-six (96) in square two hundred and six (206) in the City of Washington and District of Columbia.

By the Court: A. C. BRADLEY, Justice, &c.

True copy. Test: J. R. Young, Clerk, &c.

46 By M. A. Clancy, Asst. Clerk.

[Filed November 15, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Aaron Straus et al. } v. { Patrick Branagan et al. } Equity. No. 13,601.

Douglass S. Mackall, John A. Clarke and Walter D. Davidge, Jr. Trustees, in the above entitled cause, having reported to the court that they have sold the real estate in these proceedings mentioned, being part of lot number six (6) in square number eight hundred and sixteen (816), beginning for the same on the line of Fourth street, at a point distant eighty (80) feet South from the north-west corner of said square, running thence East seventy two feet (72) six inches (6), thence South twenty feet (20), thence West seventy two feet (72), six inches (6) to the line of said street, and thence North twenty feet (20) to the beginning, in the City of Washington, District of Columbia, to Catharine Flynn, for the sum of three thousand (\$3,000.00) dollars, and that the terms of said sale have been complied with. It is by the the court this 16th day of November, A. D. 1892, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown, on or before thirty (30) days from the date hereof. Provided a copy of this order be published in The Washington Law Reporter for three (3) consecutive weeks prior the expiration of said thirty days.

True copy. Test: A. C. BRADLEY, Justice.

46 J. R. Young, Clerk.

By L. P. Williams, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Floyd E. Davis } v. { Annie R. Wilson. } Eq. No. 13,435. Doc 32.

The trustee, Daniel O'C. Callaghan, having reported that he has sold lot No. 11, Fraser's subdivision, in square No. 412, to the complainant for the sum of \$1,925, it is this 10th day of November, A. D., 1892, ordered that the said sale shall stand finally ratified and confirmed on December 10, 1892, unless good cause to the contrary be shown on or before that day. Provided this order be published once a week for three weeks in The Washington Law Reporter prior to said day.

A. C. BRADLEY, Justice.

A true copy. Test: J. R. Young, Clerk

46 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

the 9th day of November, 1892.

Joseph S. Day } v. { Henrietta Day. } No. 14,228. Equity Docket 34.

On motion of the plaintiff, by Mr. Campbell Carrington, his solicitor, it is ordered that the defendant cause her appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is divorce from the bond of matrimony on the ground of willful desertion and abandonment.

By the Court: A. C. BRADLEY, Justice, &c.

True copy. Test: J. R. Young, Clerk, &c.

46 By M. A. Clancy, Asst. Clerk.

[Filed November 9, 1892. J. R. Young, Clerk.]

Any time you need anything printed The Law Reporter Co.'s Job Office is the place to have it done. Good work; quick work—that's what you get.

Legal Notices.**This is to Give Notice**

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration c. t. a. on the personal estate of ANNA M. MAULSBY late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of October, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 28th day of October, 1892.

John Ridout,
Mahlon Ashford,
46 Proctors.

LOUISA D. LOVETT,
IDA CORSON,
914 Farragut Sq., City.

This is to Give Notice

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court Business, letters testamentary on the personal estate of ELIZABETH HODGSON or HODGSON, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscribers, on or before the 11th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 11th day of November, 1892.

E. H. Thomas,
46 Proctor.

WILLIAM C. COLLETT,
JOHN R. WRIGHT.
1837 10th st. nw.

This is to Give Notice

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of WILLIAM P. CANADAY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 14th day of November next; they may otherwise by law be excluded from all of the said estate.

Given under my hand this 14th day of November, 1892.

John H. Lichliter,
46 Proctor.

JOHN C. COLLAHAN,
N. E. cor. 4th & I sts. nw.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court Business, letters testamentary on the personal estate of ELIZA ANN SMITH, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of November, 1892.

Samuel Maddox,
46 Proctor.

EDWIN A. GOODWIN,
1800 Vermont Ave., City.

This is to Give Notice

That the subscriber, of Washington, D. C., hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, letters testamentary on the personal estate of JACOB KEOBEL, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 5th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 5th day of November, 1892.

M. A. Mess,
46 Proctor.

JOHN P. ARDEESER,
No. 703 K st. nw.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of JOHN SMITH, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of August, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of August, 1892.

G. Herbert Renfro,
46 Proctor.

GEO. W. LEE,
Care G. Herbert Renfro, Atty-at-Law.

Legal Notices.**This is to Give Notice**

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of JOSEPHINE DIGMULLER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 5th day of November, 1892.

M. A. Mess,
46 No. 931 New Jersey Ave., nw.

This is to Give Notice

That the subscribers, John McIlhenny, of Philadelphia, Pa., and Thyrza V. McIlhenny, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of GEORGE A. MCILHENNY, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 4th day of November, 1892.

Wm. E. Edmonston,
Proctor. THYRZA V. MCILHENNY,
46 Care Wm. E. Edmonston.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Charles N. Moore
v.
Ann E. Wickes et al.

It appearing to the court that process has been duly issued against the hereinafter named defendants and returned "not to be found," on motion of Ralston & Siddons, plaintiff's solicitor's, it is this 20th day of October, A. D. 1892, ordered that Ann E. Wickes, Wm. N. E. Wickes, Mary L. Thomas, Lewis Barringer, Monroe Barringer, James S. Wethered, James E. Hews, Warner Hews, Mary Kary, Thomas Kary, Annie Kary, James Kary, Bebbie King, Joseph King, Jane H. King, Eugene E. Ellicott, Maggie T. Ellicott, Henrietta E. Baché, Carroll Ellicott, Charles Ellicott, Priscilla Ellicott, James Ellicott, Mary Ellicott, Elizabeth T. Ellicott, Marion Ellicott, Joseph Ellicott, Francis Fox Manning, Nannie P. Ellicott, Lucy Dawsey, Mary Large, Ann P. Mifflin, William Mifflin, Susan G. Poultnay, Carroll Poultnay, Evan Poultnay, Thomas Poultnay, John Biglow, John Biglow, Jr., Mary Biglow, Poultnay Biglow, Edith J. Biglow, Grace Biglow, Jane Tracy, Annie B. Harding, Flora B. Dodge, Elizabeth P. Pleasant, R. H. Pleasant, Thomas Poultnay, Susan M. Poultnay, Nancy Talcomer, A. Smith Talcomer, Samuel E. Poultnay, Ellen L. Poultnay, Walter D. C. Poultnay, Maria L. Handy, William W. Handy, Mary A. Ellicott, Frank Ellicott, William M. Ellicott, Thomas P. Ellicott, Charles E. Ellicott, Madeline Ellicott, William M. Ellicott, Mary M. Ellicott, Edith Ellicott, Lydia Ellicott, Mary M. E. Roberts, John B. Roberts, David B. Ellicott, Charles Lewis Ellicott, Henry D. Farnandis, Annie F. Munikhuyzen, Bessie Farnandis, Maria L. Handy, Evan Poultney, Elizabeth A. Tweedie, David Tweddle, Arthur L. Walker, Marion Walker, Bertha L. Walker, Edith Walker, George E. Walker, Louis Walker, Irene Walker, Janet E. Walker, Lewin W. Walker, Sophia L. Walker, Mary W. Walker, Elizabeth Thomas, Mary L. Thomas, Marie S. Thomas, Philip E. Thomas, Maria S. Hall, William Hall, Mary L. Thomas, Mandeville de M. Thomas, Claborne Thomas, Sophraim C. T. Grimes, Randolph Grimes, Ann Bell, William Bell, Mary L. Smith, Evan Thomas, Zadie B. Thomas, Wethered B. Thomas, Addie M. Thomas, Harriet Bell, James C. Bell, Evan T. Ellis, Deborah T. Ellis, Warner Turner, Zue L. J. Turner, Lydia Jackson, Isaac T. Norris, John O. Norris, Mary P. Perry, Harrietta Norris, Mary Wethered, Elizabeth Thomas, cause their appearance to be entered herein on or before the first rule day occurring forty (40) days after this date; otherwise this cause will be proceeded with as in case of default.

Provided, a copy of this order shall be published in the Washington Law Reporter, by successive weekly insertions for the space of three weeks preceding said day.

The object of this suit is to have the plaintiff's title to lot two (2), square fifty-nine (59), Washington, D. C., declared complete and perfect as against said defendants and to perpetually enjoin them from asserting title thereto as the heirs of Evan Thomas, deceased.

A. C. BRADLEY, Justice.
A true copy. Test:
J. R. Young, Clerk,
46 By M. A. Clancy, Amt. Clerk.

The Washington Law Reporter.

ESTABLISHED 1874.

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WASHINGTON, D. C. - - - - DECEMBER 29, 1892

Institutes of Common and Statute Law.

THE EDITION. By JOHN B. MINOR, L. L. D., Professor of
Common and Statute Law in the University of Vir-

ginia.

Vols. I and II just published; Vol. IV in Press.

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December, 1892.

51-8t.

Any time you need anything printed The
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what you get.

DUDLEY WEBSTER

vs.

THE NEW ENGLAND MUTUAL LIFE INSURANCE COMPANY ET. AL.

1. There appears to be no sound reason against the absolute control of the insured over a life insurance policy upon which he is paying the premiums, and in which some third person, not a creditor, is named as beneficiary, save the existence of a vested right in such person.
2. When the beneficial interest is directed to a person or class having no actual existence, and as to whom, as in this case, there is no certainty of future existence, the beneficiary is a mere supposition; and inasmuch as there is no one whose interests can be consulted, or whose rights can be prejudiced, the insured has absolute control of his policy.
3. The act of the legislature of Massachusetts of April 23, 1880, having provided a surrender value to a policy after the payment of two annual premiums, etc., and the defendant company having issued a circular to its patrons whereby it announced that a policy made for the benefit of the insured can be legally surrendered by himself or by his executor or administrator; the insured and his sons, who are the only living beneficiaries, can by their agreement and acquittance, fully exonerate and protect the company on payment of the surrender value.
4. It was within the power of the company to offer additional benefits and privileges to its patrons above those conferred by existing contracts of insurance, not only as an inducement to new insurance, but as an incentive for the continuance of old insurance; and when such offer forms the consideration in part, for the payment of premiums upon an old policy, and for its continuance in force by the insured, the company is bound by such offer as a part of its contract.

5. The most reasonable, and the only proper construction of the language used in the circular, makes it applicable to policies then existing, as well as to such as might be taken out in the future.
6. The insured was led to change his position to his detriment, upon the faith of the company's circular; and the defendant company is estopped from denying that the policy in suit has a surrender cash value.

In Equity. No. 47,628. Decided November 17, 1892.

The CHIEF JUSTICE and Justices JAMES and BRADLEY sitting.

Mr. H. O. CLAUGHTON for plaintiff.

Mr. H. E. DAVIS for defendants.

Mr. Justice BRADLEY delivered the opinion of the Court:
This cause is here upon the complainant's appeal from the decree of the special term dismissing his bill.

The cause was heard upon the bill, the answers of the defendants, and stipulation of the parties as to some agreed facts. It appears, by the record, that on the 5th day of November, 1846, the complainant insured his life in the defendant company for the sum of \$2,000; that he regularly paid the annual premiums thereon up to and including the 5th day of November, 1886, and that on the 5th day of November, 1887, he offered to surrender the policy, which he claimed had at that time a surrender value, and asked that that value be paid to him. Thereupon certain negotiations were had between the complainant and the defendant company, which were not productive of the desired result to the complainant, and he filed this bill on the 13th day of June, 1889, by which he prays that the defendant company may be decreed to pay to him the amount of his policy. It is conceded that the complainant fully complied with all the provisions of the contract of insurance, but it is insisted that his policy has no surrender value because its date was long anterior to the provisions of the statute law of the State of Massachusetts, where this defendant company was incorporated, which provided for a cash surrender value upon policies after the payment of two annual premiums, application being made therefor upon any anniversary of a premium payment.

It is also insisted that if the policy had a surrender value under the law, the complainant is not entitled to demand its payment because it is alleged that he is unable to give a legal discharge to the company.

It appears by the record that at the time of filing his bill the complainant was 80 years old, and that for forty years he had paid to the defendant company, in addition to other sums required by the policy to be deposited, the annual premium of \$51.20, and that, therefore, without taking into consideration any question of interest upon the amounts paid, the company has received upon the policy sums which, in the aggregate, considerably exceed the amount of the insurance. By the policy, the company con-

tracts to pay to the complainant, his executors, administrators and assigns, the sum insured, "for the benefit of his wife, if she shall survive him, otherwise for the benefit of his then surviving children, and the then surviving descendants of any then deceased child or children, instead of such deceased child or children respectively, subject, however, to any provisions or conditions made by the will of" the complainant. The complainant was married at the time of taking out this policy. His wife died in the year 1888. It is admitted that two children only survive, and that they are the defendants, Park Webster and Clayton Webster, aged respectively forty-seven and forty-four years, at the date of the filing of the bill. Both of these defendants have answered the bill, admitting its allegations, conceding the right of the complainant to demand and receive the surrender value of the policy, and releasing the defendant company from all liability to them, provided the amount of the policy or its surrender value is paid the complainant. It is contended, under the peculiar terms of the policy, with reference to the beneficiaries, that until the decease of the assured, it is and will be impossible to ascertain the persons entitled to its proceeds.

The act of the legislature of Massachusetts of April 23, 1880, gives a surrender value to a policy after the payment of two annual premiums, upon the termination of the insurable interest in the life of the insured, and provides that the insurable interest shall be construed to have terminated when the insured has no minor or dependent child, and his wife, if he has one, and any living beneficiary or beneficiaries named in the policy, shall join in the application for surrender thereof.

A circular issued by the defendant company May 21, 1883, and distributed by it to its patrons, announced that "a policy made for the benefit of the insured can be legally surrendered by himself or by his administrator or executor. When made for the benefit of a married woman, it can be surrendered upon her receipt and that of her husband. If made for the benefit of children, it must be shown to the satisfaction of the company that the insured had no minor or dependent child."

Although it is admitted that the complainant and his two sons could give a complete discharge and acquittance to the company if children only were named as beneficiaries, it is denied that under the peculiar description of the beneficiaries given in the policy, and in view of the possible contingency of the death of a child prior to that of the assured leaving children, and of the possibility of the remarrying of the insured and of his leaving of a widow or other child, the sons have not such a present interest as would enable them to give such a discharge as would completely protect the company. The contingency first named might happen. It is possible. But the last named contingency by reason

of the advanced age of complainant, is one that might be well deemed beyond the range of the probable, if not within the realm of the impossible.

The argument has been pressed with much force in behalf of the complainant, that in view of the fact that the insurance is made payable to him, his executors, administrators and assigns, for the benefit of his wife if she shall survive him, otherwise for the benefit of his then surviving children, &c., subject, however, to any provisions or conditions made by his will, that the beneficial interest as conferred is in the nature of a testamentary disposition, that it is ambulatory and revocable at any time by the insured, and that no beneficial right or interest has vested under the policy in any of the beneficiaries named.

It is also urged in that connection that in the event of the death of the insured, the proceeds of the policy would, in the hands of the executor or administrator, be subject to the debts of the decedent, and that creditors would have a superior right to the beneficiary.

There would appear to be no sound reason against the absolute control of the insured over a policy upon which he is paying the premiums, and in which some third person, not a creditor, is named as beneficiary, save the existence of a vested right in such person. The insured may decline to pay the premiums and may permit the policy to lapse, and hence it has been argued, and it has been held by some courts, that the insured, under such circumstances, may surrender his policy absolutely or substitute a new one with different beneficiary. On the other hand, it has been held, and the weight of authority is that way, that inasmuch as the beneficiary may elect to pay the premiums and continue the policy, his right is vested, and the policy cannot be surrendered by the insured without his consent, so as to deprive him of his right, or relieve the company of responsibility to him. If it is upon that principle that the insured, under such circumstances, cannot validly surrender or change the direction of his policy, without the concurrence of the beneficiary, it would seem to be equally logical and true that when the beneficial interest is directed to a person or a class having no actual existence, and as to whom, as in this case, there is no certainty of future existence, the beneficiary is a mere supposition; and inasmuch as there is no one whose interests can be consulted, or whose rights can be prejudiced, the insured must be absolute in his control of his policy.

Be that as it may, and deeming it unnecessary to determine whether the beneficial interest is vested or not, we are of opinion that if the quoted provisions of the law and of the company's circular apply to this policy, and it has a surrender value, inasmuch as there is no wife and there are no dependent children, and the only beneficiaries in being unite with the complainant in making a demand:

for the surrender value to be paid to the complainant, that the complainant and his sons, defendants in this cause, can by their agreement and acquittance, fully exonerate and protect the company.

The remaining question is claimed by the defendant company to be conclusively settled by the legislation of the State of Massachusetts against the asserted right of the complainant. By an act of that legislature of April 10, 1861, it was enacted that no policy of insurance on life thereafter issued by any company chartered under the authority of that Commonwealth should become forfeited the by non-payment of premium thereon.

By a resolution of the defendant company adopted August 27, 1867, all the privileges and benefits of that act were extended and made applicable to all policies of that company, then in force. It is conceded that under this resolution the policy in question in this cause became non-forfeitable. By a subsequent act of April 23, 1880, it is provided generally that no life policy issued by any company incorporated or organized under the laws of that Commonwealth should become forfeited or void for non-payment of premium after the payment of two full annual premiums. By another section of the same act, it is provided that when the insurable interest in the life of the insured has terminated, after the payment of two annual premiums, the net value of the policy shall be a surrender value payable in cash, which the holder of the policy could claim or recover in cash upon any anniversary of a premium payment; and by a succeeding section that the insurable interest shall be construed to have terminated when the insured had no minor or dependent child, and his wife, if he has one, and any living beneficiary or beneficiaries named in the policy, shall join in the application for surrender.

The two acts of 1861 and 1880 were consolidated and re-enacted November 19, 1881, and the surrender value feature was made to apply only to policies issued after December 31, 1880. An act of April 21, 1887, amending and codifying the statutes relating to insurance, probably for the purpose of determining the question whether the act of April 23, 1880, which was unlimited and general in its terms, should have a retroactive effect, provides that all policies theretofore issued shall be subject to the provisions of law applicable and in force at the date of such issue. It is averred in the bill and admitted by the answer that the complainant offered to surrender his policy on November 5, 1887, the premium anniversary.

At that date, under the legislation of the State of Massachusetts, all doubt that might have surrounded the question whether the act of April 23, 1880, was by the legislature intended to be, or could lawfully be, construed to be retroactive, had been definitely settled by the act of April 21 of the same year.

Without, therefore, the aid of some force outside of the contract stipulations of the policy itself, and independent of the statute law, this policy, although made nonforfeitable by resolution of the defendant company, had at the time of its attempted surrender no surrender value. The complainant contends that this force is found in his acceptance of a proposition made in the circular of the defendant company, issued May 21, 1883, in which it is announced that every policy upon which two or more annual premiums have been paid has a cash surrender value, which can be obtained upon demand upon the company in the manner and at the times indicated in the circular.

In behalf of the company it is claimed that this circular was not intended to amend or modify existing contracts of insurance, but that it applies only to future insurance, and that its object and purpose were simply to present the advantages under the Massachusetts law to policy holders for the purpose of inducing new insurance. The circular, so far as it is necessary to quote it for the purposes of this point, is as follows:

"Features of the Massachusetts Non-Forfeiture Law.

"First. Every policy upon which two or more annual premiums have been paid has a cash value payable when application is made therefor upon the anniversary of any subsequent premium, provided a legal discharge can be given."

It would appear to be beyond question that it was within the power of the company to offer additional benefits and privileges to its patrons above those conferred by existing contracts of insurance, not only as an inducement to new insurance, but as an incentive for the continuance of old insurance, and that when such offer forms the consideration in part for the payment of premiums upon an old policy, and of its continuance in force by the insured, the company would be bound by its contract.

The circular purports to be a statement of the condition of the Massachusetts law relating to nonforfeiture and surrender value. It was issued after the act of 1880 had been modified by that of November 19, 1881, and under the provisions of the latter act, the surrender value feature was not applicable to the policy in suit. It does not, in terms, apply the feature of surrender value to future insurance, nor is it, in terms, prospective. It deals with the present. It relates to *every* policy upon which two or more annual premiums have been paid, and it expressly declares that such a policy *has a cash value*.

If the company had intended its circular solely as an inducement for future insurance, it would have been a *very easy* matter, and the most natural form of expression to use, to have extended the privilege to policies upon which two premiums *shall be paid* and to have provided that they *shall have a cash value*.

The most reasonable, and the only proper, construction of the language used, makes it applicable to policies then existing, as well as to such as might be taken out in the future. The complainant so construed it. He accepted the privilege extended to him as a policy holder at the date of the circular, and he was induced to act upon it by ceasing the payment of premiums, and by offering to surrender the policy on an anniversary and by demanding the payment of the cash surrender value.

Since November 5, 1886, he has paid no premium and he has been led by the declared right contained within the circular, and by its invitation, to put himself in a position of default in the payment of premium, with whatever of loss or inconvenience may be entailed thereby, unless his offer to surrender is accepted, and his claim to the payment of cash value of his policy is satisfied.

In other words, he has been led to change his position to his detriment, upon the faith of the company's circular; and we are of opinion that under the plain doctrine of estoppel, the defendant company can not be permitted to deny that the policy in suit has a surrender cash value.

The complainant is entitled to recover from the defendant company the cash value of his policy.

The decree of the special term is reversed, and a decree, requiring the defendant to pay to the complainant the cash value of his policy as of the date of November 5, 1887, upon his executing and delivering to the company his bond of indemnity, as tendered by him in his bill, will be entered, the defendant to pay the costs of the cause.

If the parties can agree upon the amount, there will be no necessity for an audit and its expense may be saved; otherwise the cause will be referred to the Auditor to ascertain and report the amount.

E. C. JORDAN, JR., ADMR. OF E. C. JORDAN,

v8.

D. F. HAMLINK AND ELLEN HAMLINK.

1. It was a sufficient compliance with Rule 129 of this court, where the plaintiff described his representative character as follows: "The plaintiff, — — —, administrator of — — — deceased, sues the defendant," etc.
2. When there is an issue of fact, as well as of law, one notice will be sufficient and it will generally be expedient to have the demurrer disposed of first.
3. It is desirable that a demurrer shall be heard as early as possible; and it can hardly be supposed that it was the intention of the legislature to postpone an objection that no cause of action was stated in the pleading, any longer than it must be postponed.

4. The rule which authorized the bringing on of a demurrer on a five days' notice is not invalid. The opinion of the court in the case of *Knoedler vs. Meloy*, 2 MacArthur, 240, construing Sec. 802 of the Revised Statutes, so far as it relates to such notice, is overruled.

At Law. No. 31,841. Decided November 7, 1892.

The CHIEF JUSTICE and Justices HAGNER and JAMES sitting.

Messrs. CLARK & JOHNS for plaintiff.

Mr. Wm. A. MELOY for defendants.

Mr. Justice JAMES delivered the opinion of the Court:

The plaintiff sues in his representative character, which he states in these words: "The plaintiff, Edward C. Jordan, Jr., administrator of Edward C. Jordan, deceased, sues the defendants," etc.

The defendants demurred on the ground that this was merely a *descriptio personæ*, and was not a proper averment of his character.

Rule 129 provides that: "The special character in which the plaintiff sues shall not be considered to be in issue or necessary to be proved, unless by specific plea under oath as to the truth thereof, the same be denied."

We are of opinion that the character of the administrator is sufficiently stated as the character in which he sues. It was not necessary that he should state by what court he was appointed administrator; and we think that the objection that he may be an administrator appointed in Virginia could not even be taken, because, *non constat*, that the deceased had not assets here. At all events, his character is sufficiently stated.

The ground of the demurrer, therefore, is not sound.

Another objection, however, is made. The defendant demurred, not in form, but to his demurrer being heard when it was heard. He did not propose to have his case come to issue any sooner than it must. He refers to Sec. 802 of the Revised Statutes as forbidding the consideration of an issue of *law*, without giving ten days' notice by having it put on the calendar, before the case could be called at all. We have a rule that demurrs may be heard at any time on five days' notice. That rule, counsel have argued, is invalid, unless it be construed in this way, that first, the case must be noted for trial on the trial calendar ten days before it is called, and then after that it may be called up and still further hastened by a notice that it will be heard within five days.

It was held in the case of *Knoedler vs. Meloy*, 2 MacArthur, 240, that such was the proper construction of the statute. Mr. Justice MACARTHUR, delivering the opinion of the court, said:

"By reference to the statute, it is clear that issues of law are the subject of trial. The language of the act is, "Issues of law may be tried at a circuit court or special term." And again, "At any time after issue, and at least

ten days before the sitting of the court, either party may give notice of trial."

"It is also provided that a note of issue shall be furnished to the clerk in order to enter the cause upon the trial calendar, and this is plainly as applicable to issues of law as to issues of fact. By the express words of this section, therefore, an issue of law can only be tried upon a notice of ten days before the term, and having the cause regularly placed upon the calendar by the clerk. This is in exact conformity to the practice prescribed in Rules 42 to 47, inclusive, which were in force at that time. When there is an issue of fact as well as of law, one notice will be sufficient, and of course it will be generally be expedient to have the demurrer disposed of first. That a joinder in demurrer produces an issue of law cannot now be a matter of any doubt, and the practice in regard to noticing it for trial and entering it upon the calendar of the court where the cause is pending, must be the same as in cases in which there is an issue of fact. Rule 47, recently adopted, as far as it contravenes the statute in this respect, is inoperative and void.

"The record in this case shows that the plaintiff joined issue to the demurrer on the 12th of November, 1874, and gave a two days' notice of argument. The cause had never been entered on the calendar. Upon this notice, and in the absence of the defendant, the plaintiff obtained the order of the court overruling the demurrer. We think the plaintiff could not proceed to argument or trial without having given notice at least ten days before the sitting of the court, as is required by the Act of Congress; and the court ought to have set the order aside for this irregularity. The point is not of practical importance in this case, for the court below set the order aside, and allowed the defendant leave to plead as advised. The construction we have put on the statute and rules of court relate, however, to an important point in practice, which ought no longer to be left in uncertainty. We have, therefore, passed upon the point."

It will be observed that the point was not material to the decision of that case. We have noted also that although it was made in the brief, it does not appear to have been fully argued, or perhaps argued at all. For that reason we feel more at liberty to consider the propriety of the decision, inasmuch as we think that it was substantially *obiter dictum*. It was an attempt of the court to settle what they understood to be a troublesome point, a matter of some doubt to them, without being called upon necessarily to do so.

We are obliged to say that we differ from that decision. The language of the statute was, in section 7—I should observe that I recur to the original statute, instead of the Revised Statutes:

"SEC. 7. All issues of fact triable by a jury or by the court shall be tried before a single justice; when the trial

is by jury, at a circuit court; and when the trial is without a jury, at circuit court or special term. Issues of law may be tried at a circuit court or special term. At any time after issue, and at least ten days before the sitting of the court, either party may give notice of trial. The party giving the notice shall furnish the clerk, at least four days before the sitting of the court, with a note of the issue, containing the title of the action, the names of the attorneys, and the time when the last pleading was served; and the clerk shall thereupon enter the cause upon a calendar, according to the date of the issue."

It was observed by the court in the case to which I have referred that the language of the statute is that "Issues of law may be tried." That is a correct enough expression; but the word "trial" is a technical word, and when it is provided that "At any time after issue, and at least ten days before the sitting of the court, either party may give notice of trial," we apprehend that that is applicable to what is known as a "trial" technically. It is true that the word "trial" is applied to a question of law, but technically that is not a trial.

We take this sharp distinction because we conceive the rule as interpreted to be mischievous. It is desirable that a demurrer shall be heard as early as possible; and it can hardly be supposed that it was the intention of the legislature to postpone an objection, that no action was stated in the pleading, any longer than it must be postponed. There is no object in requiring that that issue shall be laid aside until one or other of the parties shall give notice that it is to be heard. It prolongs proceedings, and such a construction of the intention of the legislature should not be adopted unless it must be.

We find, then, that there is a want of that particularity in describing it as a trial which relieves us from the necessity of saying that this issue must be noticed ten days before the sitting of the court.

We find that several unconnected subjects are mentioned in this section. The reviser separated them. I take pleasure in reminding the bar once more that although I was one of the commissioners to revise the statutes, I had nothing to do with this revision. Section 801 was, "All issues of fact triable by a jury or by the court shall be tried before a single justice." Then in the next subject he grouped these: "Issues of law may be tried at a special term." "At any time after issue and at least ten days before the sitting of the court, either party may give notice of trial."

The effect of that mode of dividing the subjects was to group the latter as being on one subject, while the provision in section 801 related to another subject. We find that several subjects *not necessarily connected*, were provided for in section 7 of the original statute; and as the Supreme Court has several times said, whenever there is any question of

construction by reason of the collocation of subjects in the Revised Statutes, or arising from a change of language, we have the right to go back to the original statutes to ascertain the proper construction.

We find, in this way, that there is no manifest intention to make them all parts of one matter. We are of opinion the rule which authorized the bringing on of a demurrer on a five days' notice is not invalid.

I might remark that in thus overruling the former decision, we are supported by an opinion of the whole court, pronounced by the very making of this present rule. They felt at liberty to make it, and we conceive that although the judges were not sitting in court, it is a strong expression of opinion on which we have the right to rely.

Mr. Justice HAGNER: I want to say a word in reference to this important matter, as there seems to have existed a substantial doubt as to what should be the proper practice. If that which the plaintiff's counsel in this case insists is the proper one, be so held, the ruling would indeed make the demurrer justify its derivation—a matter for useless delay. If it is indeed true that no demurrer could be heard even on five days' notice unless it had been also on the general calendar for ten days before the sitting of the court, then it would result that any suit brought within those ten days, must of necessity, lie over without ability to hear the demurrer, however ridiculous and faulty the declaration may be, until that term shall have passed. That would be a most inconvenient practice, as it seems to us.

I think a very important consideration is presented by the court with reference to these rules under the decision made in 1875. It was conceded by the justice who delivered that opinion that it was not essential to the decision of the case. It was a mere *obiter*. In 1879, when the rules were revised, the court then explicitly provided that a demurrer might be heard on five days' notice. That remained undisturbed until the new rules in 1886 were issued. Then the rule was changed so as to declare that cases involving issues of law should be placed on a separate calendar, to be called the law calendar, and should then be ready for hearing without notice at such time as may be appointed therefor by the justice. This again was changed in 1888, and the previous provision was re-established, that demurrers might be heard on motion after five days' notice.

These rules have thus thrice been considered by the full court in General Term after that decision. It must have been the opinion of the court that the decision in 2d MacArthur was not law. We have now all consulted on this subject (those who sat in the case and those who did not), and we are of opinion that the decision just announced contained a just construction of the law.

Mr. Justice JAMES: The bar will observe that this ruling is in favor of the prompt dispatch of business.

WILLIAM E. HODGE

v8.

ROBERT MASON.

Under the Seventy-third rule of court, where enough is disclosed in the affidavit of defense to show that the consideration of the note was the sale of an *invention*, which the Patent Office decides not to be an invention, and that the alleged consideration has failed, the affidavit is sufficient.

At Law No. 82,205. Decided November 7, 1892.
The CHIEF JUSTICE and Justices HAGNER and JAMES sitting.

Mr. J. W. COOKSEY for plaintiff.

Mr. THOMAS M. FIELDS for defendant.

Mr. Justice JAMES delivered the opinion of the Court:

This is an action by the payee on a promissory note. The plaintiff obtained a judgment under the Seventy-third Rule, on the ground that the defendant's affidavit did not set out sufficiently a defense. The affidavit was in the following words:

"That on or about the 9th day of June, A. D. 1891, the plaintiff claiming to be the owner of an interest in an alleged invention in galvanic batteries, for which application for letters patent of the United States had been made, by representing the same to be of great value, influenced this defendant to purchase a small portion of said plaintiff's interest for the nominal sum of one thousand dollars, for which amount the note described in the said declaration was given. That said note was given with the understanding and belief that it was not to be negotiated, and that it was to become due and payable only at the instance of this defendant, or when said alleged invention was patented and funds had been realized therefrom.

"That said alleged invention has not been patented and the most important claims have been refused protection for want of novelty and patentability under the laws of the United States. That said note was given without consideration. That the consideration thereof has wholly failed, and further, that prior to the institution of this suit, defendant tendered to the plaintiff a re-assignment of the interest in the said alleged invention acquired by him, as aforesaid, and requested a surrender of the said note, but plaintiff refused to accept said re-assignment, or to surrender said note. That the plaintiff is not entitled to recover the whole or any part of the sum claimed in his said declaration."

Clearly this affidavit of defense is inartificially framed, but it discloses that this note was given for an invention for which a patent had been demanded, and that such patent had been refused. Now, it is said that an invention

is a valuable consideration; that many inventions are of great utility, and that the mere fact that this is not patentable is no objection to the value of the invention itself. I know of no way in which an invention in which the whole world participates can be of any special value. There is no secrecy when the application to the Patent Office is made and the invention is disclosed. It is not comparable, therefore, to that kind of cases.

We find that enough is disclosed to show that it was sold as an invention, and that the Patent Office, authorized to decide such questions, subject to appeal here, has decided that there was in this case *no invention*, for that is the effect of refusing a patent.

Enough, therefore, is disclosed in this affidavit of defence, to show that the consideration of this note was the sale of an invention, which the Patent Office decides not to be an invention, and the alleged consideration has failed.

We have remarked that the statements here are not very artificially made, but we conceive that this Seventy-third Rule is not intended to operate as a trap. When we find a sufficient indication of a defence, we think it is the proper administration of the rule that the case should go to the jury. It is not so obligatory that judgment should be rendered for the plaintiff whenever the defendant makes an affidavit containing any defects.

We find on the face of these papers sufficient evidence that this should have gone to the, jury and the question of the invention or non-invention allowed to be shown there.

We therefore feel constrained to reverse the judgment that was granted under the Seventy-third Rule.

Legal Notices.

Rule of Court.

RULE 20. * * * * Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

FIRST INSERTION.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

the thirtieth day of December, 1892.

Sarah Frances Hill
v.
Frances N. Higbee et al. } No. 14,000. Equity Docket 33.

On motion of the plaintiff, by Mr. John L. Hunt, her solicitor, it is ordered that the defendants, FRANCES N. HIGBEE, of Burlington, Iowa, GEORGE T. NEALLEY, residence unknown, EDWARD M. NEALLEY and LILLY NEALLEY, of Burlington, Iowa, GREENLEAF C. NEALLEY, of Houston, Texas, HENRIETTA P. GREGSON, of Worcester, Mass., cause their appearances to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to determine the respective interests and equities of the heirs of Elizabeth S. Grimes, deceased, in and to certain real estate situated in Washington, D. C., and for the appointment of a receiver of the rents and profits thereof, pending determination thereof.

By the Court. A. C. BRADLEY, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
By L. P. Williams, Asst. Clerk.

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,**
Holding a Special Term for Orphans' Court Business,

December 23d, 1892.

In the case of Allan S. Johnson, administrator c.t.a., of HENRY F. BREUNINGER, deceased, the administrator c.t.a. aforesaid has, with the approval of the court, appointed Friday, the 20th day of January, A.D. 1893, at 11 o'clock, a.m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the administrator c.t.a. will take the benefit of the law against them.

Provided, a copy of this order be published once a week for three weeks in The Washington Law Reporter previous to the said day.

Test:

L. P. WRIGHT,
Register of Wills for the District of Columbia.
52 Edwards & Barnard, Proctors.
No. 4,719. Ad. Doc. 17.

This is to Give Notice

That the subscriber of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of JOHN BEHA, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23d day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23d day of December, 1892.

WILHELMINE BEHA,

Care of Leon Tobriner, Atty. at Law.
52 Leon Tobriner, Proctor.**This is to Give Notice**

That the subscribers of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of VIRGINIA NEVILLE TAYLOR, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 24th day of December, 1892.

FREDERICK B. MCGUIRE.

ROBERT E. TAYLOR.

52 R. Ross Perry, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

Holding a Special Term for Orphans' Court Business.

This 23d December, 1892.

In re estate of JAMES A. NOLAN, late of City of Washington, D.C. No. 5347. Ad. Doc. 18.

Application having been made for the probate of a paper-writing propounded as the last will and testament and for letters testamentary on the estate of said James A. Nolan, deceased, by Annie M. Shea.

Notice is hereby given to all concerned to appear in this court on Friday, January 20th, 1893, at 11 o'clock, a.m., to show cause, if any exist, against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter, once in each of three successive weeks before said day.

By the Court:

A. C. BRADLEY, Justice.
A true copy. Test: L. P. Wright, Reg. of Wills, D.C.
52 Edwards & Barnard, Proctors for Applicant.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

In re estate of RUDOLPH LOBSIGER, late of Washington, D.C. No. 5348. Ad. Doc. 18.

Application having been made for letters of administration on the estate of said Rudolph Lobsiger, deceased, Martin V. Webb having been suggested by the widow and next of kin:

Notice is hereby given to all concerned to appear in this court on Friday, January 20th, 1893, at 11 o'clock, a.m., to show cause, if any exist, against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter, once in each of three successive weeks before said day.

By the Court:

A. C. BRADLEY, Justice.
A true copy. Test: L. P. Wright, Reg. of Wills, D.C.
52 E. B. Hay, Proctor for Applicant.

Legal Notices.**SECOND INSERTION.****IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,**

Holding a Special Term for Orphans' Court Business,

This 18th day of December, 1892.

In re estate of PHILIP KIERNAN, deceased, late of Washington, D.C. No. 5312. Ad. Doc. 18.

Application having been made for the Probate of a paper-writing propounded as the last will and testament and for letters testamentary on the estate of said Philip Kiernan, by Philip Kiernan:

Notice is hereby given to all concerned to appear in this court on Friday, January 13, 1893, at 11 o'clock, a.m., to show cause, if any exist, against the granting of such application.

A copy of this order shall be published in the Washington Law Reporter once in each of three successive weeks before said day.

By the Court:

A. C. BRADLEY, Justice.
A true copy. Test: L. P. Wright, Reg. of Wills, D.C.
51 J. N. Saunders, Proctor for applicant.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business,

This 16th of December, 1892.

In re estate of BENJAMIN W. BRICE, late of Washington City, District of Columbia. No. 5329. Ad. D. 18.

Application having been made for the probate of a paper-writing propounded as the last will and testament and for letters testamentary on the estate of said Benjamin W. Brice, deceased, by William B. Rochester:

Notice is hereby given to all concerned to appear in this court on Friday, January 20th, 1893, at 11 o'clock, a.m., to show cause, if any exist, against the granting of such application.

A copy of this order shall be published in The Washington Law Reporter once in each of three successive weeks before said day.

By the Court:

A. C. BRADLEY, Justice.
A true copy. Test: L. P. Wright, Reg. of Wills, D.C.
51 Webb & Webb, Proctors for applicant.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

the 15th day of December, A.D. 1892.

Deborah J. Apple

v. { Eq. No. 14,351.

John R. Tucker et al. Process having been issued against the defendants herein-after named, and duly returned "not to be found" it is on motion of plaintiff, by Ralston & Siddons, her solicitors, ordered that John R. Tucker, Laura Tucker, H. Tudor Tucker, Fannie Bland Graham, J. R. Graham, Mary T. Magill, Evelina Powell, W. L. Powell, Virginia Edwards, John E. Edwards, Elizabeth Dallas Tucker, Virginia B. Tucker, Dallas Tucker, Hattie A. Tucker, Cassie D. Brown, John Thompson Brown, John R. Tucker, Emma B. Tucker, Evelina T. Lucas, D. B. Lucas, Nannie S. McLaughlin, I. Fairfax McLaughlin, St. George Tucker, Brooke, Mary B. Brooke, Frank J. Brooke, Gav Bentley Brooke, D. Tucker Brooke, Lucy Higgins Brooke, Henry L. Brooke, Elizabeth D. Brooke, Laura Beverly Bedinger, Everett W. Bedinger, Elizabeth Gilmer Tucker, St. George Tucker, Walker Gilmer Tucker, Lizzie Edwards Tucker, Evelina Tucker, Lucy Richardson, Robert B. Richardson, Annie Tyler, Lyon G. Tyler, Eliza Taylor Tucker, Alfred B. Tucker, Cynthia B. T. Coleman, Charles W. Coleman, B. St. George Tucker, Eliza C. Tucker, Fannie B. B. T. Taliaferro, Julia Clark Tucker, Nathaniel Beverly Tucker, William Francis Peyton Tucker, John R. Bryan, Delia Page, John R. Page, Fanny Carmichael, S. W. Carmichael, Georgia B. Grinnan, A. G. Grinnan, John R. Bryan, Jr., Margaret R. Bryan, St. George Tucker, C. Bryan, Joseph Bryan, Isabel S. Bryan, C. B. Bryan, Mary S. C. Bryan, Fanny Bland Brown, H. Peronneau Brown, Virginia C. Braxton, St. George Tucker Coa ter, E. L. Tucker, James Tucker, Beverly Tucker, Jane S. Tucker, Maggie Tucker, Ada B. Lewis Tucker, Virginia Tucker, Virginia Lewis Tucker, Francis M. Tucker, Mary Thornton Tucker, Nathaniel Beverly Tucker, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

Provided that a copy of this order shall be published in The Washington Law Reporter for three weeks by successive weekly publications preceding said day.

The object of the suit is to establish record title to lots 3 and 4, square 151, Washington, D.C., in plaintiff as against defendants, and to enjoin them from claiming title thereto adverse to plaintiff as the heirs of Thomas Tudor Tucker, deceased.

A. C. BRADLEY, Justice.
A true copy. Test: J. R. Young, Clerk,
51 By M. A. Clancy, Asst. Clerk.
[Filed December 15, 1892. J. R. Young.]

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
the 20th day of December, 1892.

Lillie M. Weatherald | No. 14,343. Eq. Doc. 34.
v.

Frank P. Weatherald. |

On motion of the plaintiff, by Mr. Campbell Carrington, her solicitor it is ordered that the defendant cause his appearance to be entered herein on or before the first rule occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

The object of this suit is for divorce *a vinculo matrimonii* for willful desertion and abandonment.

By the Court. A. C. BRADLEY, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.

51 [Filed Dec. 20, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
the 4th day of November, 1892.

Mary Downs | Equity. No. 14,178.
v.

Margaret Downs and others. |

On motion of the complainant, by Fillmore Beall, her attorney, it is ordered that the defendants, Patrick T. Downs, John Downs, Eugene Crimmin, Jeremiah Sullivan, Johanna Sullivan, Jeremiah Sullivan, Jr., Eugene Sullivan, Michael Sullivan and William Sullivan, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to procure a decree for the sale of the south 11 feet of lot 18, in square 43, by the depth of 75 feet of said lot, of which David Downs died seized and possessed, for the purpose of partition.

A. C. BRADLEY, Justice.
51 A true copy. Test: J. R. Young, Clerk.
By M. A. Clancy, Asst. Clerk.

[Filed November 4, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
the 19th Day of December, 1892.

Joseph Jackson | No. 14,335. Equity Docket 34.
v.

Jackson Ross and others. |

On motion of the plaintiff, by Mr. William H. Disis, his solicitor, it is ordered that the defendants, Jackson Ross, Simon Ross and Emer Ross, (his wife) Maria Asher and Elridge Asher (her husband), Margery Johnson, Lloyd Hawkins, Frank Hawkins, and Mary Hawkins (his wife), Matilda Holmes and John Holmes (her husband), and Annie Dorsey cause their appearance to be entered herein on or before February 7, 1893, the first rule day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

The object of this suit is to establish the fee simple title of the plaintiff to the north half of Lot 18 in Square 585 in Washington City, to correct the deed therefrom from Pompey Jackson and wife to plaintiff in 1865, and perpetually to enjoin the defendants from asserting any title thereto as derived from said Pompey Jackson.

By the Court. A. C. BRADLEY, Justice, &c.
True copy. Test: J. R. Young, Clerk, &c.
51 By M. A. Clancy, Asst. Clerk.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of PETER and CATHERINE DUNN, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of December, 1892.

THOMAS J. DUNN,

51 McGraw & Small, Proctors. 1448 Madison St. nw.

This is to Give Notice

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of JAMES W. DENVER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of December, 1892.

MARTIN F. MORRIS.

51 M. J. Colbert, Proctor.

Legal Notices

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA
the 12th day of December, A. D. 1892.

Francis M. Criswell | Eq. No. 14,352.
v.

John R. Tucker et al. |

Process having been issued against the defendants herein-after named, and duly returned "not to be found," it is on motion of plaintiff, by Palston & Siddons, his solicitors, ordered that John R. Tucker, Laura Tucker, H. Tudor Tucker, Fannie Bland Graham, J. R. Graham, Mary T. Magill, Evelina Powell, W. L. Powell, Virginia Edwards, John E. Edwards, Elizabeth Dallas Tucker, Virginia B. Tucker, Dallas Tucker, Hattie A. Tucker, Cassie D. Brown, John Thompson Brown, John R. Tucker, Emma B. Tucker, Evelina T. Lucas, D. B. Lucas, Nannie S. McLaughlin, I. Fairfax McLaughlin, St. George Tucker Brooke, Mary B. Brooke, Frank J. Brooke, Gay Bentley Brooke, D. Tucker Brooke, Henry L. Brooke, Lucy Higgins Brooke, Elizabeth D. Brooke, Laura Beverly Bedinger, Everett W. Bedinger, Elizabeth Gilmer Tucker, St. George Tucker, Walker Gilmer Tucker, Lizzie Edwards Tucker, Evelina Tucker, Lucy Richardson, Robert B. Richardson, Annie Tyler, Lyon G. Tyler, Eliza Taylor Tucker, Alfred B. Tucker, Cynthia B. T. Coleman, Charles W. Coleman, B. St. George Tucker, Eliza C. Tucker, Fannie B. B. T. Taliaferro, Julia Clark Tucker, Nathaniel Beverly Tucker, William Francis Peyton Tucker, John R. Bryan, Delia Page, John R. Page, Fanny Carmichael, S. W. Carmichael, Georgia B. Grinnan, A. G. Grinnan, John R. Bryan, Jr., Margaret R. Bryan, St. George Tucker, C. Bryan, Joseph Bryan, Isabel S. Bryan, C. B. Bryan, Mary S. C. Bryan, Fanny Bland Brown, H. Peronneau Brown, Virginia C. Braxton, St. George Tucker Coalter, Ellis Tucker James Tucker, Beverly Tucker, Jane S. Tucker, Maggie Tucker, Ada B. Lewis Tucker, Virginia Tucker, Virginia Lewis Tucker, Francis M. Tucker, Mary Thornton Tucker, Nathaniel Beverly Tucker cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

Provided that a copy of this order shall be published in The Washington Law Reporter for three weeks by successive weekly publications preceding said day.

The object of this suit is to establish of record title to lots 7, 8, 9, square 151, Washington, D. C., in plaintiff as against defendants, and to enjoin them from claiming title therein adverse to plaintiff as the heirs of Thomas Tudor Tucker, deceased.

A. C. BRADLEY, Justice.

51 A true copy. Test: J. R. Young, Clerk.
By M. A. Clancy, Asst. Clerk.

[Filed Dec. 15, 1892. J. R. Young, Clerk.]

This is to Give Notice

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters testamentary on the personal estate of MONTGOMERY C. MEIGS, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 18th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 18th day of December, 1892.

MONTGOMERY MEIGS.

51 MARY MEIGS TAYLOR.

No. 4,783. Ad. Doc. 17. Ward Thoron, Proctor.

THIRD INSERTION.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Philah J. DeNeale | In Equity. No. 18,855.
vs.

Helen A. Kyte et al. |

Wymann L. Cole, the trustee appointed to make sale of the real estate in this cause, to wit, part of lot numbered twenty-six (26) in square numbered nine hundred and ninety-five (995) beginning for the same at the northeast corner of said lot and running south thirteen (13) feet; thence west eighty-one and six-twelfths (81 $\frac{6}{12}$) feet; thence north thirteen (13) feet; thence east eighty-one and six-twelfths (81 $\frac{6}{12}$) feet to the beginning, having reported the sale thereof to Calvin Payne, at the price of \$1,066.00, it is, this 7th day of December, 1892, ordered and decreed that said sale be formally ratified and confirmed unless cause to the contrary be shown within thirty days from the date hereof.

Provided, a copy of this order be published in the Washington Law Reporter for three successive weeks prior to the expiration of said thirty days.

A. C. BRADLEY, Justice.
True copy. Test: J. R. Young, Clerk.
By L. P. Williams, Asst. Clerk.

50 [Filed December 7, 1892. J. R. Young, Clerk.]

Legal Notices.**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

Holding an Equity Court.

The seventh day of December, A. D. 1892.

Allen C. Clark, Complainant,

vs.

Virginia Ayers, Mary A. White, E. A. Wilkinson, Defendants.

Equity No. 14,340. Docket 34.

On motion of the complainant, by Messrs. William B. Todd and D. W. Baker, his solicitors, it is ordered that the defendants, Virginia Ayers, Mary A. White and E. A. Wilkinson, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to decree a partition and sale of original lots numbered 1 and 2 in square numbered one thousand and ninety-six, and also to decree an account between the complainant and defendants.

A. C. BRADLEY, Justice.

True copy. Test: J. R. Young, Clerk,
50 By L. P. Williams, Asst. Clerk.
[Filed December 7, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.Emily B. Freeman et al., }
v. } No. 14,087. Equity.

Henry W. Freeman et al.

Clarence A. Brandenburg and Henry Wise Garnett, the trustees in the above entitled cause, having reported to the court that they have sold the real estate described in the bill of complaint in said cause, being part of original lot numbered one (1), in square numbered one hundred and ninety-six (196), beginning for the same at the southeast corner of said lot and running thence west along M street twenty (20) feet, thence north sixty-two (62) feet and ten (10) inches, thence east twenty (20) feet, to 15th street west, thence south to the place of beginning, subject to a deed of trust for \$1,200, to Richard M. Parker for \$5,850; it is by the court, this 8th December, 1892, ordered that said sale be ratified and confirmed, unless cause to the contrary thereof be shown on or before thirty days from the date hereof.

Provided a copy of this order be published in The Washington Law Reporter for three successive weeks prior to the expiration of said thirty days.

A. C. BRADLEY, Justice.

A true copy. Test: J. R. Young, Clerk,
50 By M. A. Clancy, Asst. Clerk.
[Filed Dec. 8, 1892. J. R. Young, Clerk.]

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court Business, letters of administration c. t. a. on the personal estate of EDSON L. DENSMORE, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of December, 1892.

M. D. PECK,
934 F st. nw.

50

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

Holding an Equity Court,

the seventh day of December, A. D. 1892.

Allen C. Clark, Complainant,

vs.

Margaret C. M. Thompson, byron L. Fin'ey, Defendants.

No. 14,279. Equity Doc. 34.

On motion of the complainant, by Messrs. William B. Todd and D. W. Baker, his solicitors, it is ordered that the defendant, BYRON L. FINLEY cause his appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to decree a partition and sale of lots numbered fifteen (15), sixteen (16), seventeen (17), and eighteen (18) in block numbered three (3) in Onion and Butts' subdivision styled "Reno," of the estate of Giles Dyer, as recorded in the surveyor's office of the District of Columbia.

A. C. BRADLEY, Justice.

True copy. Test: J. R. Young, Clerk,
50 By L. P. Williams, Asst. Clerk.
[Filed December 7, 1892. J. R. Young, Clerk.]

Legal Notices**IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.**

George Francis Williams, Trustee,

v.

Joseph Hunter et al.

In Equity. No. 14,353. Docket No. 34.

It appearing to the court that process has been duly issued against the hereinafter named defendants and returned "not to be found," it is this 9th day of December, A. D. 1892, on motion of the complainant, ordered, that Joseph Hunter and wife, Mary L., Hester B. Waring, nee Hunter, and husband, John L., Caroline Lee Hunter, Robert W. Hunter, Edith P. Hunter, William S. Hunter, Robert Wade Hunter, Cordelia A. Johnston, nee Hunter, John Henry Van Dyck, Margaret Lindsay Van Dyck, Edith Janney, nee Hunter, Sophie Hammill and husband, John H., Cordelia Waters, nee Hunter, Addison Marbury and wife, Elizabeth H., Mary L. Hunter and Annie E. Hunter, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

Provided a copy of this order shall be published once a week for three successive weeks before that day in The Washington Law Reporter.

The object of this suit is to have complainant's title as trustee, to the north twenty feet front by depth of lot four (4) in square eight hundred and forty-five (845), Washington, D. C., declared complete and perfect as against the defendants, and to perpetually enjoin them from asserting title to said part of lot as heirs of John Hunter, deceased.

By the court. A. C. BRADLEY, Justice.
A true copy. Test: J. R. Young, Clerk,
50 By M. A. Clancy, Asst. Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
holding a special term for Orphans' Court business,

this 9th of December, 1892.

In re estate of HENRY SMALLWOOD, late of Washington, District of Columbia. No. 5185. Ad. D. 18.

Application having been made for the Probate of a paper-writing propounded as the last will and testament and codicil, and for letters testamentary on the estate of said HENRY SMALLWOOD deceased, by Mary Catherine Diggs:

Notice is hereby given to all concerned to appear in this court on Friday, January 6, 1893, at 11 o'clock, a. m., to show cause if any exist against the granting of such application.

A copy of this order shall be published in The Washington Law Reporter, once in each of three successive weeks before said day.

By the Court: A. C. BRADLEY, Justice.
A true copy. Test: L. P. Wright, Reg. of Wills, D. C.
50 A. A. Hoehling, jr., Proctor for applicant.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration c. t. a. on the personal estate of TIMOTHY DIX BOLLES, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of December, 1892.
CAROLINE A. CAUDLE BOLLES
1801 F st. nw.

50 Wm. B. Webb, Proctor.

This is to Give Notice

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a special term for Orphans' Court business, letters of administration on the personal estate of GEORGE N. WALKER, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of December, 1892.
GENEVA WALKER,
50 1639 Benning Road.

Walter A. Johnston, Proctor.

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